No. 01-1289

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

CURTIS B. CAMPBELL and INEZ PREECE CAMPBELL,

Respondents.

ON WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

JOINT APPENDIX

Volume VI of VII (pp. 2459a-2880a)

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THE COURT: Let the record show the jury's left the courtroom. Proceed, Mr. Christensen.

MR. CHRISTENSEN: Yes. The court may recall that before opening statement, I indicated that we had concerns with these insurance regulators that are testifying as experts, that Mr. Hanni had them call around the country and ask people around the country their opinions. And I indicated, and we had a concern over that as improper evidence.

Certainly the regulator can testify what he's done, he's looked at certain documents, he's made phone calls. But to get to the point where you use an expert either to quote someone else who's not here subject to examination, or even worse, to say that, "It's Mr. Jones' opinion in Florida such-and-such," "It's Mr. Smith's opinion in Arkansas," is clearly inappropriate.

And before we get in a situation in front of the jury of this witness being asked for that kind of information, I wanted to make a record on it. I think it's clearly improper, and we will object to that sort of testimony being offered. I don't know if counsel's planning to offer it. I was reminded of it last night as I prepared --

MR. HANNI: I think I can shortcut it. I'm [55] not.

MR. CHRISTENSEN: You're not going to?

MR. HANNI: No, I'm going to ask him if he talked to people, and I'm going to ask him when he did it, and I'm going to ask the subject matters, and that's it. Not what they said.

MR. CHRISTENSEN: What they said, or what their opinions were?

MR. HANNI: No, I'm not going to ask that.

MR. CHRISTENSEN: Okay.

MR. HANNI: That's hearsay.

MR. HUMPHERYS: And the witness knows not to volunteer that.

MR. HANNI: He knows that.

MR. CHRISTENSEN: That was in all the charts prepared by these three different regulators in their depos. That's why it was a concern.

THE COURT: I'll be alert to it, then, and Mr. Hanni knows what he's doing.

(The jury returned to the courtroom.)

THE COURT: Let the record show that the jury has returned to the courtroom, and the parties are here represented.

[56] **RICHARD F. REYNOLDS** called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HANNI:

Q Would you state your name, please.

A Richard F. Reynolds.

Q Where do you live, Mr. Reynolds?

A Austin, Texas.

Q What is your present occupation? Are you retired now?

A Yes, sir, I am.

* * *

[59] * * *

Q And so you moved to Texas in what year, did you say?

A The end of 1968.

Q And what did you do when you got back into Texas?

A I joined a food and housing operation, College Inns of America, as their financial vice president.

Q And what was the nature of their business?

A They operated off-campus dormitories, food service and dormitory lodging in nine of the western universities. It was called College Inns.

* * *

[60] * * *

Q How long did you stay with that company?

A Shortly -- My intent was to get back to Dallas when I left Chicago, and my family was in Dallas, and I did not sell my home there, and I wanted to return. So I took the opportunity through College Inns to do that.

A year later I joined a group of investors in the development and apartment business, and I joined, it's called Mactee, M-A-C-T-E-E, Mactee Capital Corporation. And I was there for approximately two years, and controlling and managing development operation. We built apartments and we managed apartments, and we developed some land with respect to future apartment development.

Q What years are we talking about, now?

A I'm talking about in '69 and into '70.

Q What did you do after that?

A Through a neighbor acquaintance of mine, going back to Collins days -- I've known he and his wife for about seven years -- became the president of a holding company, a young fellow. When both the owner and the executive vice president died from heart problems in the same year, and his background was in the printing business only, and he knew my diversified background, [61] and he asked me to do some consulting work for him at that time. And I joined Ben Griffin Enterprises in 1970.

Q That's Ben Griffin?

A Ben, B-E-N, Griffin Enterprises. That was the name of the family.

Q What was the nature of the business of that company?

A Very diversified. We operated a glove manufacturing company, cabinet manufacturing company, engine rebuilding company, sash and door company, a tractor company, and a printing business, along with land development, industrial land development, several projects.

Q How long were you with that company?

A Fifteen years, through 1985.

Q That would be from about 1970 --

A '70 to '85, yes, sir.

Q What did you do after that?

A In 1985, the family had a breakup, and we went through a dissolution of the assets of the corporation. At that time I acquired the tractor business, which was known as Ben Griffin Tractor Company, it's a Ford tractor dealership in Dallas County, Texas.

[62] Q You became an owner of that?

A Yes, sir, a 100 percent owner.

Q And you operated that for how long?

A Up through 1989, the first part of 1989. I sold that business to Ford Motor Company.

Q And what did you do, then, in 1989?

A In 1989, when I sold the business, I considered retiring, but accepted an appointment to the state board of insurance in Texas.

Q Who appointed you?

A The governor, Governor Clements.

Q And was he a Republican or Democrat?

A He was a Republican, sir.

Q And are you a Republican?

A Yes, sir.

Q You were appointed for how long a term?

A I was appointed to fulfill the four years remaining on a six-year term.

* * *

[65] * * *

Q Now, Mr. Reynolds, I haven't heard you say that you're a lawyer, and I haven't heard you say that you worked for any insurance companies before you went with the department. Can

you tell the court and jury how come you went with the insurance department? How did that happen?

A How that happened, correct, my entire nearly [66] forty years of career work experience did not involve ever working for the insurance industry, or I was never in the employ of an insurance company.

They came back with the changes going on at the end of 1988, with changes taking place on the state board of insurance, and I was one of three individuals that's name and background was submitted by an appointment panel to the governor. And the governor selected me, and I accepted an appointment to the state board of insurance.

And all three members had very diversified business backgrounds, because that's what, at that time they were looking for people to serve on that board that had a very extensive business background.

Q And that was your background.

A Yes, sir.

Q Business background.

A Yes, sir.

Q Tell the court and the jury about this market conduct section or division of the department. How big was it? And when we talk about market conduct, what are we talking about?

A Well, we're talking about all aspects. What's happening, the conduct in the marketplace. Not just by carriers or insurance companies, but by agents, [67] brokers, third-party administrators. Anyone who's licensed and has anything to do with insurance in the state, it falls under market conduct.

And specifically we have a section that spends full time with respect to the activities in the marketplace, and it's called that, and it can be called various things, but I think it currently, and back then, primarily was consumer protection.

And that department handles all the inquiries, handles all the complaints that come into the department. That department

actually follows up and helps resolve complaints that come into the department, and that's usually divided into two different sections. One is life, accident, and health complaints, and the other is property and casualty complaints.

In addition to that, there's a section that concerns itself wholly with advertising, misrepresentation in advertising and products, by either life, accident and health, or P and C companies. That's another section, they spend full time watching advertising.

And in addition to that, to supplement that group that's referred to that, we have a large legal and compliance department made up of a whole batch of attorneys. I think the last count I had when I was on [68] the board, we had seventy-three attorneys on our staff in total, with law degrees. They weren't practicing law outside, they were full-time employees inside.

A number of those in the enforcement side are involved in conduct, because they're the ones that pick up and investigate and write orders for the commissioner, enforcement orders.

Over in the regulatory side we have another, at that time approximately 200 people involved in what we call the regulatory side. And those people are interested in forms, and the compliance with forms. When a policy's written, the interest of the state, there, and the department, is that what's sold is, at a minimum, covered in the policy that's mandated by statute or by the department.

And so in Texas we very rigidly control forms. When we speak of policy and form, the form is the policy, and that includes what's covered. And unlike a number of states, and we still do in Texas, it's very rigid, and the companies don't have a whole lot of options on the regulated side. In the Lloyd's and mutual side, the accounting mutual side is less regulated with respect to forms, or the surplus market side.

And so you bring in a plate of people in the [69] regulatory side that are involved in conduct also. Because conduct just does not mean, like what we've got before us as claims handling.

There's a whole bunch of things going on with respect to market conduct, starting with the sale of a policy to an individual.

Q But does it, Mr. Reynolds, also involve claims handling?

A Yes, sir, it does.

Q And when you're dealing with claims handling, what does your market conduct division address itself to? What kind of problems?

A One way or another, something might lead to cause a market conduct examination. And most of them -- or they were when I was on the board -- were relatively correct in believing that it's still much that same way. There are a lot of market conduct exams that are specific. They're not general. And by that, I mean some exams are targeted because of something that happens in the consumer protection department would indicate something just right with respect to the complaints that are coming into that department. And through the commissioner can order a specific targeted market exam. And they'll go in and look just at those files that would be applicable to the point that has been raised within the enforcement group.

[70] On the other side of it, you have a large regular market conduct studies that's done by the examination department, and those are very broad, and they included a number of factors. First of all, when they prepare the scope of a market examination, they collect data from the complaint department on open files, and even on closed files, to take with them, as part of their preparation.

* * *

[84] * * *

Q Now, Mr. Reynolds, from a regulatory standpoint, are you out looking for isolated violations by an insurance company, or what are you looking for?

A Are you talking about me personally?

Q No, no, I'm talking about your department, your market conduct group. Are you looking for just isolated violations, or are you looking for something else?

[85] A We're looking at all violations. But there's a difference in individual or certain types of violations that may uncover in a routine exam and/or, if it comes through the complaint department, and it appears there's some type of pattern, or it's just not quite right, they can target an exam. And they go in and then look at a very broad scope of activity within a claims handling process.

Q And is that what you're --

A Internally to that company.

Q Is that what you're looking for, is a pattern of violations by an insurance company?

A Well, you're looking for that, certainly. That's primary. But even if it's not a pattern, you still have an obligation to work with the company to get them to correct whatever the deficiency might be.

* * *

[86] * * *

Q (BY MR. HANNI) Mr. Reynolds, we have been, before we went on break we were talking about the NAIC and meetings that you attended and so on. Now, at my request, when you were employed in this case to appear as an expert witness, did I ask you, or request that you talk to some other regulators?

A Yes, sir, you did.

Q And did you do that?

A Yes, sir, I did.

Q When did you do that?

A It would have been in April of this year.

Q Can you tell the court and jury just who you talked to, the names of the people and what states they were from? Do you have a list there of them?

[87] A Yes, sir.

Q All right, just tell them who they were.

A The actual names?

Q Yes, if you've got them.

A I've got them right here. Louis Bergeron, former commissioner of New Hampshire; Hanly Clark, commissioner in Virginia; Cathy Weatherford, former Oklahoma commissioner; Gary Chartier, current deputy commissioner of Oklahoma; Craig Gardner, current deputy commissioner, Louisiana; Larry Maslowski, North Dakota, he's a nine-year deputy.

And by the way, Craig Gardner's been a deputy commissioner for twelve years in Texas and Louisiana. And Mary Jane Cleary, former commissioner, South Dakota; Jackie Nevin, P and C director, seven years in South Dakota. Ralph Close, the Florida deputy on market, or consumer compliance; and Jim Waterford, long-time deputy at Florida.

Ron Sheffield, Arkansas, deputy commissioner; Mike Weaver, Alabama, former commissioner; and in Texas, Lyndon Olson, former board member; Tom Bond, former commissioner; Woody Pogue, former commissioner; and Jerry Johns, which is a representative of industry, was at Southwestern Information, Insurance Information Service, it's a trade group.

[88] And of course, in addition to those specific people that I contacted in April, I've been in touch with many commissioners and deputies ever since 1989 that I see regularly at NAIC meetings.

Q Mr. Reynolds, I don't want to know what those people told you, but I want to know the subject matter that you talked to them about in April of this year.

A Well, specifically I talked to them about three different items. Number one, I spoke to them with reference to market share of State Farm within their knowledge, the time that they served with respect to what happened in the marketplace on volume for State Farm. In other words, their market share.

Q All right.

A And two, I asked them specifically about complaint data, and complaint ratios in their state, and if it was a matter of whether it was published or not. In other words, was there an inquiry with respect to complaint ratios. And third, I asked them, in their opinion, to rank --

* * *

[89] * * *

Q (BY MR. HANNI) Go ahead. What did you talk about? You've told us two things. What else did you talk about?

A The third item, I asked them about State Farm's ranking in their state.

Q With respect to what?

A With respect to treatment and service of policy holders.

[90] Q Now, Mr. Reynolds, based on your education, your business background, your business experience, your experience as a board member of the Texas insurance department, your experience in being a member of the National Association of Insurance Commissioners, your attending of their meetings, your association and discussions with the various regulators from the various states, your attending of those meetings since you got off the board, do you have an opinion as to whether or not State Farm Auto or State Farm Fire has engaged in a pattern or practice, a widespread one, or a national one, of cheating and deceiving insureds and claimants? Do you have that opinion?

A Yes, sir, I do.

Q Will you tell us what your opinion is?

* * *

A Okay. State Farm, in my opinion, in performance and record that they have in the marketplace nationally, is above average. And when compared to the industry as a whole, you could consider them excellent, in my opinion.

Two, it's my opinion that State Farm has not [91] now, nor have they in the past, engaged in a widespread practice of unfair dealings, or unfair deceptive trade practices with policy holders or third-party claimants or others in the marketplace.

And it's further, third, my opinion, that there's -- It's my opinion that they have not, in any way, shape, or form, established a pattern or practice of not dealing fairly with their policy holders and claimants. And I'm talking about a widespread practice, or practice and policy, pattern. There's a big difference.

Q Now, Mr. Reynolds, before I get in, in detail, to your reasons, which I will develop in a minute, I want to go back for a moment to the complaint ratios in Texas. And I have here an exhibit that we have marked as 148-D. Can you tell the court and jury what that is?

A It's the 1994 Texas consumer complaint report on the twenty largest automobile insurers by complaint ratio. It shows that State Farm Mutual Automobile Company was ranked number 5 in Texas in 1994, with respect to complaint ratios for 1994 against total complaints for 1994, and against total policies in force as of 12-31-94.

It shows that the complaint ratio for 1994 [92] was 2.83 per 10,000 policies. There were 870 total recorded written complaints on State Farm Mutual Automobile Company, in that same year they had 3,076,940 policies in force.

Q So they had 3,076,000 policies in force.

A Correct.

Q And of the twenty carriers in 1994, what was State Farm's ranking?

A Number five, it was a 2.83 ratio to 10,000 policies in force.

Q And when you ranked them -- So this twenty largest companies would be ranked 1 to 20?

A Yes. In the actual total report in '94 they went through fifty companies. They did that, and this is a private passenger,

this is automobile, this is not homeowners or other lines of insurance, this is strictly automobile.

Q When did Texas start -- I'm going to put up here on this board "rank," and this is the policy numbers. Did you check the prior years of the complaint ratios in Texas?

A Yes, I did, and State Farm Mutual Automobile never ranked higher than fifteen. In fact, three of those years they were under ten, in 1991 they were number three in the ranking.

[93] Q That would have been in '91?

A '91, sir, yes.

Q Okay.

A And they've been ranked formally and published since 1989 by the department.

* * *

Q (BY MR. HANNI) Now, going back, Mr. Reynolds, you have expressed your opinions about State Farm with respect to its, the absence of any pattern or practice of deceiving or cheating insureds or claimants. I want you to tell the court and the jury your reasons for that opinion, or those opinions.

A Let me do it this way, counselor. Let me back up to when I had an initial call from Mr. Yancey, [94] here, in this state, asking me to, if I would be available as a witness, possibly. And so I have to start back there, if I might do that. May I do that?

Q Go ahead, but give us your reasons.

A And what happened at that point in time, unlike some testimony that I had the opportunity to look at, Mr. Yancey asked me if I'd be available, and I said, first of all, "What's involved? Who's involved, and why, and what's the charge?" And when he explained to me that the charge --

MR. CHRISTENSEN: Your Honor, I'm going to object to this as hearsay.

Q (BY MR. HANNI) Stay away from what other people told you. Just give us your reasons.

A All right. Number one. There are a number of relevant factors, in my opinion, with respect to why I formed the opinion that I did. Number one would be my experience, four years full-time board member, state board of insurance. Subsequent to that, my involvement with NCCI, and the NAIC that I've been involved with in nearly eight years, now. I've attended twenty-nine of their meetings over that period of time.

In addition, as a full-time regulator with respect to worker's comp in the state of Texas, I'm a member of the commission, worker's comp commission, I'm [95] chair of that.

In addition to that -- By the way, I might add, at that point, is the backup, when we're looking in forming an opinion with respect to widespread policy or pattern of unfair practices, one's got to recognize, and I do for sure, the number of claims being processed, just, say, in the state of Texas, in any one month by State Farm. You're talking about tens of thousands of claims on 3 million policies.

Thousands of State Farm employees handle those tens of thousands of claims every day and every month. There is going to be some mistakes, there's going to be some claims mishandled. That leads me to my work on the Texas Worker's Compensation Commission, we process over 10,000 claims every month at the worker's comp commission.

Do our people in, that 1,100 people make mistakes? Do they mishandle some claims? Do they unfairly handle some claims? You bet they do. Do they do it intentionally, or is there a widespread practice? Absolutely not. You're dealing with human beings, and thousands of claims being handled.

That leads me to my current position, also, on the Property and Casualty and Guaranty Association board in Texas, and we handle the claims for insolvent [96] companies in Texas. Right currently we have over 50,000 claims in process. That's our entire charge, handling and processing and making payments on those claims. In other words --

Q Mr. Reynolds, let me interrupt you, there, while you're talking about this guaranty fund. So that the court and jury understands what that's all about, what is it? What's its function?

A Simply stated, we're like an insurance company with respect to processing the claims that were left when a company went bankrupt. It's called receivership, and insolvency. But it's like normal business, you'd say the company's bankrupt, they leave 10,000 claims out here that's in process, somebody's got to process those claims.

Under our state code and laws, that's charged to the P and C Guaranty Association Board. We have a staff of people, we have, at one point last year we had 165 employees, plus we employ outside contract help to help process that number of claims.

Q How does the guaranty fund get its money to pay these claims if a company goes broke?

A Okay, first of all, a special deputy receiver tries to marshal the assets of that bankrupt company, what assets are there to marshal, to make available for [97] payment of claims. If there's not enough assets to do that, the guaranty association has the authority in the state of Texas to assess all companies doing business, insurance companies doing business in the state of Texas, which we do. And right now we're operating on, we have over $400 million in reserves to process and handle the liabilities represented by the claims that we're processing. The same type of claim we're talking about here today.

Q And you serve on the board of that guaranty fund?

A Yes.

Q And how long have you done that?

A I've done that six months, now, roughly.

Q And you're currently on that board?

A Yes, sir. I took a six-year appointment by the current commissioner of insurance.

Q All right. Now, you were --

A I'm a public member. I'm not a representative of an insurance company.

Q Now, you are giving us your reasons for your primary opinions in this case. Go ahead and --

A That's one, to me, that's a relevant factor, is my background, my involvement, extensive involvement with NAIC in their exchange of information with members [98] and deputy career, technically competent people that are represented at NAIC meetings.

Another relevant factor is complaint ratios. We introduced, the counselor did, one, from the state of Texas. But in addition to that, look at the major states' actual published complaint ratio data that's available. I go to Florida and Alabama and California, New York, as well as Texas.

Take a look at 1993, and I provided that at the deposition, State Farm Mutual Automobile Company in 1993, in the state of California, ranked number 2 in complaint ratios that were gathered and published by the California department, when Garamendi was commissioner in the state of California.

You go to Florida, and their data indicates and represents, on complaint ratios published in '94 and '93, that State Farm ranked in the top third of companies doing business in -- I'm speaking directly to audit, no other line, because that's what the subject is here today.

In New York, New York State Farm is ranked in the top, above average in the way they rank them, for the last ten years, because they've kept data longer and published it longer than most other states.

I bring that out as a relevant factor. These [99] are major states. If you add up all the writings of State Farm, you're talking like 40 percent of all their writings are done in Florida, New York, Texas, California. And if you added Ohio and Pennsylvania and Michigan and Illinois, you've got over 50 percent of their writings in eight states.

Q Fifty percent of the writings what?

A Of nationally for State Farm auto insurance. There's 16 percent of the states write 50 percent of State Farm Mutual Automobile's insurance policies.

* * *

[102] * * *

Q Okay. Now I want to talk for a minute about a market conduct examination. Tell us, if an insurance [103] department, Texas, for example, who decides to do a market conduct examination, who pays for that?

A Well, if it's just done by our internal people, we just go out and do an exam. And the time and effort involved in that examination is billed to the carrier.

Q So the carrier pays for the examination?

A Correct.

Q Does the money that the carrier pays, where does that go?

A The money that's paid to the carrier goes to the general fund.

Q And that's under the control --

A Of the state of Texas.

Q -- the control of the legislature?

A Yes, sir.

Q Does the department have the option, if they want to hire outside people, of doing that to help in the market conduct exam?

A You bet they do. And it's true in, just about nearly every state has the option to hire outside market examiners and/or financial examiners, or CPAs to do examinations of companies. There's no fences built around them.

Q And if a market examination is done on a [104] company, if there is an indication of a pattern and practice of deceiving claim holders or insureds, would you expect that to show up during the course of one of those examinations?

A It's possible. It's more likely it would come through the complaint department.

Q More likely through the department that takes these complaints?

A Handles the complaints, right. Which triggers the examination. If there's any indication that the rate's too high, or the type of complaints are out of line, or there's some kind of pattern that may come to light in that department, it goes to the enforcement department and eventually gets over to the examination department. So from that standpoint, then, it would be pursued and developed through the examination.

Q Now, Mr. Reynolds, there's been a witness that came in here, and from that witness chair testified that you fellows that are regulators don't know what you're doing, and he's testified that you are understaffed, and he's testified you don't have a, you're underbudget, you don't have enough money, and he says that there's no way that you people can detect a national pattern or practice of deceiving and cheating [105] insureds and claimants. What do you have to say about that?

A I'd certainly disagree with whoever the witness was, because it's absolutely false. And particularly that's true in all the major states. We're not underfunded, and we do not lack in resources.

Q Well, go on and explain that to the court and jury. Will you?

A All the major states right now, to the best of my knowledge, have over $50 million budgets, all the way up nearly, like in California, ninety-seven or eight million dollars to conduct their work. If examinations are involved, financial or market conduct, there's no fences built around the major states at all. In fact, most the other states, because of the pass-through --

Q When you talk about no fence built around, what are you talking about?

A I meant we can go out right now in the state of Texas, this year there are forty financial examinations being contracted outside. The carrier pays for those examinations. And there it doesn't go to the general fund, the company pays directly to the contractor who's performing the examination, and the payment goes through the commissioner. True in Florida, New York, California, there's no fences built around. [106] And you can do that from a financial standpoint or a market standpoint.

In other words, if you feel you don't have the budget, you can go outside. If there's something, a need comes up -- What I'm saying, there's no fences built around a commissioner if he feels there's a need to do an in-depth market conduct or financial examination of a company. There's no restrictions financially, because the company pays for that examination.

Q Mr. Reynolds, there's been in talk before by, with other witnesses, about class actions that have come along, and in particular class actions that have been commenced in Texas. And I want to talk to you about that for a minute. And these are cases that the plaintiffs' counsel has provided us.

Now, the first one I want to talk about is Carmen May against the State Farm Automobile Company and the State Farm County Mutual Insurance Company of Texas.

Now, first of all, I want to call your attention to the fact that this case was filed in 1996.

MR. CHRISTENSEN: Your Honor, I'm going to object to this on the ground that this witness testified in his deposition he didn't know of any class actions. There was an understanding that if we were going to [107] present our case first, the witness would be limited to the deposition testimony.

THE COURT: Do you have a response to that, Mr. Hanni?

MR. HANNI: Well, counsel has opened this up, and has asked the witness whether or not he was familiar with this, and I think he's entitled to know that it was a '96 case, and I'm entitled to ask him about whether it's a judgment, or just a complaint, or

anything like that. That is in this book that was provided to us by plaintiff.

THE COURT: I'll sustain the objection. You can raise that in redirect if it's appropriate.

CROSS EXAMINATION BY MR. CHRISTENSEN:

* * *

Mr. Reynolds, you were on the Texas insurance board from '89 to '93.

A Yes, sir.

Q Prior to going on that board, you had no [108] insurance experience?

A That's not correct.

Q You had -- Let me put it this way. You had no training or experience in the proper handling of claims.

A That's correct.

Q Do you claim to be an expert in the proper handling of claims?

A No, sir.

Q You consider Mr. Yancey a friend of yours?

A A business friend, correct. I met him through the NAIC.

Q Now, it is your sworn testimony, at least it was in your deposition, that you're not aware of State Farm paying less than full fair value on any claim, ever; isn't that true?

A That, I believe that's correct. To my knowledge, that's correct.

Q And you're not aware of State Farm ever treating anyone unfairly.

A That's correct.

Q I want to go to the complaint data that, from the Texas complaints. Could we do that?

A I just have the deposition in front of me. So I don't know.

[109] Q You don't have your documents?

A No, sir.

Q Maybe you and I can share ours.

MR. HANNI: What are you looking at?

MR. CHRISTENSEN: I'm going to look at Texas '94 complaints.

Q (BY MR. CHRISTENSEN) By the way, you testified earlier this morning that any complaint that's written in Texas is considered a valid complaint. All it has, the only criteria to be valid is it's put in writing.

A That's right, and they process it, every written complaint gets passed on for investigation.

Q But --

A And is entered as a complaint.

Q But to be a complaint that shows up in these complaint ratios you've been talking about, the department has to determine it's a, quote, valid complaint, right?

A That's correct.

Q So merely the fact it's put in writing doesn't get it in these tables. There has to be --

A Well, it's got to be related to a legitimate complaint. Somebody uses a complaint form and sends it in, and it has nothing to do with what the department [110] can do something about -- You'd be surprised at the kind of things that come into the department.

Q Okay. But it's a law that became effective September 1st, 1993 in Texas that required only closed complaints that are justified, verified as accurate, and documented as valid to be put in the complaint guide, didn't it?

A Correct.

Q So when we have a number out of the Texas complaints, the department has determined it's a valid complaint.

A I would agree with that.

Q Okay. Let's talk about the complaint numbers for Texas for 1994 involving State Farm's companies. You looked at all the State Farm companies, not just auto, right?

A Not necessarily. I zeroed in on State Farm Automobile Mutual Company. I thought that's who we were concerned with, here, in this lawsuit.

Q In your deposition, didn't you produce documents listing State Farm Fire, as well?

A They may have been in those documents, because they're included in the total report that comes out of the department. If they're in the top fifty companies complaint ratio-wise, there could be two or [111] three companies, or it could be one of their substandard mutual companies.

MR. HANNI: Mr. Christensen, are these all in the exhibit 2 and 3 that was marked at Mr. Reynolds' deposition?

MR. CHRISTENSEN: Yes.

THE WITNESS: Yeah, I recognize that.

MR. HANNI: Let me just give him these exhibits so that he can follow you on what you're putting up there.

MR. CHRISTENSEN: Okay, that's a good idea.

Q (BY MR. CHRISTENSEN) Do you recognize this handwriting?

A It's my handwriting.

Q That's yours, isn't it? This only listed the fifty largest auto insurers?

A Yes, from the report.

Q There's hundreds of them in Texas, aren't there?

A Yes, sir.

Q Now, you and Mr. Hanni introduced as an exhibit this ranking of State Farm Auto as fifth. Where did State Farm Lloyd's rank out of fifty homeowners companies in the state of Texas in '94 on the complaint ratio?

[112] A If it's in the report I'll find it.

Q Can't you read your handwriting there?

MR. BELNAP: Objection, relevancy, Your Honor.

MR. HUMPHERYS: Your Honor, State Farm -- Go ahead.

THE WITNESS: You're looking at the -- I find Lloyd's now.

MR. CHRISTENSEN: He covered in his --

MR. HANNI: Just a minute until his objection's ruled on.

MR. CHRISTENSEN: In the State Farm companies, Mr. Hanni asked him about State Farm Fire and Auto, we've had Mr. Moskalski testify in Texas because of special Texas laws, State Farm has to do some of its business under State Farm Lloyd's and State Farm County Mutual. I also am offering it to show there's been some selective reporting of data, here.

MR. BELNAP: Your Honor, State Farm Lloyd's and the other companies are not auto companies. They are homeowners companies. And this wasn't raised in direct with either Mr. Moskalski or Mr. Reynolds.

MR. HUMPHERYS: My understanding --

MR. BELNAP: It was done on cross.

MR. HUMPHERYS: My understanding from Bruce [113] Callis' deposition, that substandard and non-preferred auto policies are issued out of those companies, though.

MR. CHRISTENSEN: Well, and Mr. Hanni asked him about fire and auto this morning.

MR. BELNAP: No, he didn't.

MR. CHRISTENSEN: Yeah, he did, I heard it.

THE COURT: Overruled. I don't want to go into this very deeply, but you can at least ask him these questions.

Q (BY MR. CHRISTENSEN) All right, out of the fifty largest homeowners writers in the state of Texas, where did State Farm Lloyd's rank?

A It says right there, forty-third. I put them up there because that's what it is, on a ranking of 5.34 complaint ratio to 10,000 policies. And for clarification, the Lloyd's company in the state of Texas cannot write automobile insurance.

Q It is a wholly-owned subsidiary of what company, sir?

A Of State Farm.

Q Auto, right?

A No, Lloyd's. It's a separate Texas company.

Q State Farm Lloyd's is a wholly-owned subsidiary of State Farm Auto, isn't it?

A I'm not advised. I really -- I don't know [114] that. You may know that, but I thought Lloyd's was a separate company, licensed to do business in the state of Texas.

Q Is it your testimony that State Farm County Mutual -- Do you want me to show you the chart, or will you take our word for it?

A You can show me the chart. I'm not an organizational expert on State Farm.

Q I thought you were a State Farm expert.

A No, sir.

Q Isn't that why you're here?

A No, sir.

Q You see first of all State Farm County Mutual of Texas?

A I can't read it, but I'll take your word for it.

Q You see the State Farm Lloyd's of Texas?

A Yes, sir.

Q See State Farm Lloyd's, Inc., a corporation domiciled in the state of Texas? Do you see 100 percent ownership? Can you read that from where you are?

A I can't read it. I'll take your word for it, counsel.

Q And the line is drawn right up to State Farm Mutual Automobile Company, isn't it?

[115] A Uh-huh. I'm sorry, I don't -- I'm not following your point.

Q You're welcome to come down here and look if you would like to.

A No, I take your word for it, counselor. Because so far as I'm concerned, the fact that Lloyd's ranks forty-third in homeowners is pretty doggone good among 400-something companies writing homeowners.

Q They're forty-third out of fifty.

A The top fifty.

Q The biggest fifty.

A Right.

Q Which may mean they're the worst fifty. We just don't know, right?

A We do know. And that's your words, counselor.

Q Well, you don't have the complaint ratios for the other 500 companies in Texas, do you?

A No, sir. The department would.

Q But you don't.

A I don't, that's correct.

Q So we're only looking at 10 percent of the companies that we have complaint ratios on?

A That write the preponderance of business.

Q Now, can you look at the 1994 Texas consumer [116] complaints? Have you found that information now, sir?

A Yes, I have.

Q Okay. Tell me how many valid complaints were filed against the auto company. Can I help you look on page --

A I've got it, page 6 of the report.

Q Yes.

A Indicates 870 total complaints for 1994.

Q Those are total valid complaints, right?

A Right, as described by the department in this booklet.

Q Okay. All right, how many have we got in State Farm County?

A I have to find State Farm under -- Forty.

Q With -- By the way, that's an auto insurer, isn't it?

A Yes, sir.

Q How about on the fire company?

A We jump over to find -- I haven't been able to find it yet.

Q Well, let me see if I can help you. If you'll look on -- You're looking for the county? It's right on the same page with State Farm Auto, page 6. It's just about ten lines lower. It's ranked fifteenth.

A Okay, right, I found that one.

[117] Q That's 40?

A Yes, sir.

Q Now turn to page 9, if you would. See State Farm Fire and Casualty?

A Okay, right.

Q They're ranked thirty-sixth?

A Yes, sir.

Q Out of fifty?

A Yes, sir. 177 complaints.

Q 177 valid complaints.

A Yes, sir.

Q And how about State Farm Lloyd's?

A State Farm Lloyd's shows 375 complaints.

Q All right, let's put their ranks here. We've got auto was five, and was county fifteen? And was fire ranked thirty-sixth?

A Yes, sir.

Q Okay. So in one year in the state of Texas -- And this is the most recent data that at least you provided us, isn't it, the '94 data?

A Yes, sir.

Q If my math's right, we had 1,462 complaints.

A Yes, sir.

Q Now, if we were to put that in context, Texas represents about 7 percent of the population of the [118] United States, doesn't it?

A I'm not sure what 18 million people represent, but a pretty sizable chunk.

Q I actually brought with me some data, and I'm not trying to be exact, looking at some '94 figures, I'm looking at some population data for United States. Let me show you, for '94, does the U.S. show a little over 260 million?

A Okay.

Q And Texas is a little over 18 million?

A Yes, sir.

Q So if we had 18 million over 260, could you tell us what percent of the population that is of the U.S., assuming that Texas is 18 and the U.S. is 260?

A This shows around right around 7 percent, 6.92.

Q So about 7 percent?

A Yes, sir.

Q And I played with this last night, I'm not much of a mathematician, but I figured, roughly speaking, 7 percent is about one-fourteenth?

A Population-wise, correct.

Q So --

A Excuse me, not population-wise, but go ahead.

Q So if I'm right, would you multiply 1,462 by [119] 14?

MR. SCHULTZ: Your Honor, I object to the example, because it assumes facts that are inaccurate. Every state has a different ratio. And you can't just make that across-the-board assumption.

MR. BELNAP: Also the relevancy, Your Honor, of the other numbers to this defendant in this case.

MR. CHRISTENSEN: I'm trying to put it in context. I'm not trying to prove precise numbers with this.

THE COURT: Where are we going with this example?

MR. CHRISTENSEN: Simply to show, if you were to extrapolate that for the country, about what magnitude we'd be talking.

MR. SCHULTZ: That's misleading, Your Honor, because we had testimony yesterday of a .23 ratio in another state, so it's an unfair example.

MR. BELNAP: It's misleading.

MR. CHRISTENSEN: I think it shows part of the point I'm trying to make, is they're trying to apply his experience in Texas and make it nationwide.

THE COURT: I think that --

MR. BELNAP: But that was based upon discussions with other people and looking at ratio data [120] from other states that he did not testify about, Your Honor.

MR. CHRISTENSEN: I'm trying to probe this.

THE COURT: I'm going to allow it. Overruled. Let's not spend a lot of time with it.

MR. CHRISTENSEN: I'm not, I'm about ready to move on.

THE COURT: It's marginal.

Q (BY MR. CHRISTENSEN) Multiply that number by 14, what do we get?

A 20,000.

Q About 20,000?

A Uh-huh.

Q And that would be in one year?

A Yes, sir.

MR. HANNI: Your Honor, I certainly object to this, because how you can take a number out of Texas and apply it nationally, I just don't know. The witness' testimony was limited to what the ratios were in Texas. He wasn't talking about other states.

MR. CHRISTENSEN: They're the ones that decided to play this ratio game. I agree, it's totally flawed, it's unreliable, and I'm showing that.

THE WITNESS: It's not flawed, counselor, when you compare that figure to 40 million policy [121] holders.

THE COURT: Overruled. I'm going to strike the comment as unsolicited, and you can proceed, but I think that if you're trying to make the point it's unreliable, so be it. But in the sense that you're trying to submit it as substantive evidence, then the court won't allow that.

Q (BY MR. CHRISTENSEN) Going back to Texas -- And you do claim this is reliable, right?

A That's what came out of the Texas department of insurance, and I relied on it, yes, sir.

Q Almost 1,500 valid complaints against the State Farm companies in Texas in one year, and you don't know of a single instance where State Farm has ever been unfair to anyone. That's your testimony. Isn't it?

A To my knowledge, that's correct. That 1,462 represents 4 million policies in force.

Q But your job for four years was to find out who was being treated unfairly, and get to the bottom of this kind of things.

A Not my job. My staff's job.

Q You didn't do it?

A And they would have seen a pattern if it was there.

Q You relied on them, right?

[122] A Yes.

Q We had a witness here from Illinois yesterday, Mr. Rogers.

A Yes, sir.

Q I assume you're aware that he's been here to testify?

A Yes, sir.

Q You relied on people like Mr. Rogers to have the specific knowledge of what was going on out in the marketplace with State Farm and other companies.

A His counterparts completely across the state, plus our own, which we have many competent people in Texas.

Q Right. You didn't rely on Mr. Rogers, but people that had similar jobs, similar functions?

A I'm not sure what all his functions are. I know he's a deputy in the state of Illinois.

Q Right. You would expect he would, someone like that would have far more knowledge about State Farm than you would.

A Yes, and I have enough confidence in the state of Illinois that if there was a pattern, widespread pattern and practice by any company, the Illinois department would become aware of it.

Q And that, Mr. Rogers is the man in Illinois [123] that would be expected to spot such a pattern, isn't he?

A Or through his staff, probably, that's correct.

Q Would it surprise you to learn that there were 80,000 people who were mistreated on the use of after-market parts in Illinois, and Mr. Rogers didn't know a thing about it?

A Who decided the 80,000?

MR. BELNAP: Your Honor, excuse me.

THE COURT: Just a minute.

MR. BELNAP: I'm going to object to that as lack of foundation, it misstates the case. The order, the settlement agreement in that case specifically provided that many of those people were excluded. Others had to put a proof of claim in, there were steps that had to be proceeded on, and that's a misstatement, Your Honor.

MR. CHRISTENSEN: I'd like to see the settlement agreement. I haven't seen it. Do you have it?

MR. BELNAP: In the stuff that you had.

MR. CHRISTENSEN: I thought it was simply an order.

THE COURT: I'm going to sustain the objection as a misstatement of what I thought was the [124] implication of that settlement agreement.

Q (BY MR. CHRISTENSEN) You're not aware of any bad faith verdicts against State Farm? That was your deposition testimony, right?

A I said I had no knowledge of any, that's correct.

Q And you haven't gained any since your deposition?

A Yes, I have.

Q You've been shown that by --

A I still don't have any knowledge of it, but I've been made aware that there are some.

Q The bad faith verdicts that we found that we gave to State Farm's counsel have now been shown to you.

A I believe there were, I don't know the names of them, but I can tell, if you enumerate it I can tell you yes or no.

Q Okay, I'm going to do that in a minute. But at the time of your deposition, when you formed your opinions after your years on the insurance commission, you didn't know of any, right?

A I had no knowledge of any class action or other suit against State Farm.

Q Bad faith, punitive damage verdicts, nothing like that.

[125] A That's correct. You never asked me if I was aware that there were lawsuits in the state of Texas against State Farm. Or I would have answered it differently.

Q I asked you if you knew of bad faith verdicts, and you said no.

A That's correct.

Q I asked if you knew of punitive damage verdicts, and you said no.

A That's correct.

Q I asked you if you were aware of any finding of improper conduct by State Farm and you said no, didn't you?

A Not to my knowledge, I answered it.

Q I want to ask you about some of these Texas cases. By the way, when did you learn about these bad faith cases?

A From the counselor last night.

Q Last night? The first time you've heard of them.

A Yeah, that's correct. Except for one of them.

Q Which one was that?

A I'm not sure, now, you'll have to tell me which one. There are hundreds of class action suits [126] going on all the time.

Q I'm not talking bad faith verdicts. I don't want to confuse you or the jury. I'm now talking about verdicts of misconduct by State Farm in individual cases, not class actions.

A Okay, you switched from class actions to individual actions? I may not be aware of those at all. The only thing I'm aware of, the counselor went over with me, were two or three class actions that are pending, or under litigation.

Q In Texas.

A In Texas.

Q And you first learned about them last night.

A Yes, sir, except for one that I'd seen a blip in some insurance news bulletin that I get regularly.

MR. HANNI: I object to counsel referring to those as verdicts. Unless he's got further information than what he gave us in the black binder.

MR. CHRISTENSEN: If I said verdicts, that was inadvertent. Class actions.

Q (BY MR. CHRISTENSEN) Some of the class actions have resulted in judgments, some have resulted in settlements, and some are still pending. Do you understand that, or do you know, of the books we've provided?

[127] A I'm not advised on that.

Q An insurance commission doing its job shouldn't wait for a verdict to investigate, should it? If there are allegations of misconduct, they ought to investigate and see if there's any truth to them, shouldn't they?

A If it's warranted, yes, sir. Just an allegation doesn't mean it's warranted.

Q But it's worth finding out if it's warranted, isn't it?

A Not necessarily. Depends on where the complaints are coming from.

Q Let me ask you about a case that came out of the Court of Appeals of Texas in Beaumont, June 24th, 1993. Were you at the insurance department then?

A No, sir.

MR. HANNI: Is that in this black book?

MR. CHRISTENSEN: It's part of the cases we have provided to you.

MR. BELNAP: You mean out of the case list?

MR. CHRISTENSEN: Yes.

Q (BY MR. CHRISTENSEN) That's the date of the appeal. The case was tried, obviously, a year or two earlier, that would have been while you were at the department, right?

[128] A Yes, sir.

Q State Farm Fire and Casualty versus Simmons. State Farm was found guilty of bad faith, violations of the Texas Deceptive Trade Practices Act, and the trial court and the appellate court --

MR. BELNAP: Your Honor --

MR. SCHULTZ: Your Honor, could we approach the bench on this?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. CHRISTENSEN) I will not read to you from the cases, but I'll give you enough information as best I can, paraphrasing on the spot to see if you're aware of any of these.

The one that I was talking about, the appeal decided in '93, it was tried during the time that you were on the board --

MR. BELNAP: Is this the State Farm Fire/Simmons case, counsel?

MR. CHRISTENSEN: Yes.

Q (BY MR. CHRISTENSEN) The case where the insureds were falsely accused of arson on their own home. The court expressed great concern that there had been a pre-determined investigation which was geared at [129] supporting the denial, rather than getting at the facts. And State Farm was found in violation of the Deceptive Trade Practices Act in Texas, as well as other misconduct. And punitive damages. Does that ring any bells to you?

A When you mentioned arson, it barely rings a bell. We have a lot of arson in the state, and the companies that are doing their job by aggressively pursuing arson claims sometimes probably make the wrong decisions.

Q Do you have a problem, as a regulator, with outcome-oriented investigations by insurance companies?

A If that's a legitimate practice, I have no problem with it.

Q Do you even know what it is?

A No, that's why I answered it the way I did.

Q It's not a legitimate practice, is it?

A I don't know.

Q Let me move to the Nickelal case versus State Farm Lloyd's out of the Court of Appeals of Texas at Corpus Christy,

it came out in December of '93 from the Court of Appeals. Obviously it was tried while you were on the board.

MR. BELNAP: Your Honor, can the record just reflect a continuing objection on these non-auto cases, [130] and for the other reasons we discussed at bench?

THE COURT: It may.

MR. BELNAP: Thank you.

Q (BY MR. CHRISTENSEN) A case where some people's home settled, the issue was whether it was a leak in their plumbing or an outside cause. If it was a leak in their plumbing then their insurance covered it.

The court determined bad faith, a violation of the Deceptive Trade Practices Act in Texas, punitive damages, expressed concern that State Farm had used an expert that they had reason to know would support their position before he investigated, and that expert gave an opinion supporting denial of the claim without doing proper testing. And these people lost their home.

Also they were not told that their policy included living expenses so they could go live somewhere else while the problem was fixed. Does that case ring any bells to you?

A No, sir.

Q Those are some pretty serious findings, aren't they?

A On those specific cases, yes, sir.

Q That's something the insurance department ought to be looking into, isn't it?

A Let me put it in proper context, counselor. [131] I don't know how many cases you just read to me.

Q We've got some more, don't get impatient.

A I don't know -- How many do you have in total which I don't have knowledge of?

Q Well, sir, the reason I'm going into this is you've claimed earlier today that if there's anything going on with State Farm that's bad, you would know, haven't you?

A The staff would have --

MR. HANNI: I object to that.

THE WITNESS: That isn't what I said, counselor.

MR. HANNI: Just a minute. When I make an objection, let me finish it first. I object to that kind of a question. The witness has testified that isolated instances is not what they're looking for, they're looking for pattern.

THE COURT: Overruled. We don't need a speaking objection, counsel.

Q (BY MR. CHRISTENSEN) You've also testified you don't know of a single instance where State Farm's treated anybody unfairly, haven't you?

A That, to my knowledge, that is correct.

Q Well, we can shortcut this if you want to simply admit that you don't know what State Farm's out [132] there doing. If you'll admit that, we'll save a lot of time.

A Hey, we're going to save a whole lot of time by me being able to answer your question, counselor.

Q You admit that?

A I will not admit that.

Q You don't know what State Farm's doing, do you?

A The staff of the departments know what State Farm's doing.

Q But you don't.

A I've said that. I have no knowledge of those cases. And those individual cases don't mean a pattern to me at all.

Q How many cases do you have to have to have a pattern?

A Well, let me put it in context. May I do that?

Q Certainly.

A All right. Say only 5 percent of 3 million policies in a year result in a claim. That's 150,000 policies. Say only 5 percent of those 150,000 claims result in a lawsuit. How many is that? That's 5,000 lawsuits.

Now, of those 5,000 lawsuits, you've [133] presented six or seven, and maybe you have another dozen. Say it's fifteen

lawsuits that result in a verdict against State Farm, or Farmers, or whoever it might be. You're talking about only less than one half of one percent of the lawsuits that were filed result in a negative award against State Farm. And that's one one-hundredth of the claims, one one-hundredth, 1 percent of the claims filed that year.

Now, do you determine that's a pattern? I don't.

Q Okay, sir.

A That's what our departments have to look at. A pattern in the Unfair Practices Act in the state of Texas, and I think most all states, and the NAIC model clearly states it's got to be a pattern. Individual instances do not, in itself, make a pattern.

Q And you don't care about individual instances, do you?

A Absolutely we do. In a staff --

Q Campbells don't count, in your mind.

THE COURT: Let him finish his answer.

THE WITNESS: The department is very concerned. They're concerned with a pattern. If there's a pattern, the department and the regulators will take action. But they've got to be convinced [134] there's a pattern. And fourteen lawsuits against State Farm out of 150,000 claims does not, in my mind, or most regulators' minds, constitute a pattern. Are they investigated? Certainly they are.

Q (BY MR. CHRISTENSEN) You didn't investigate these.

A Obviously not. I didn't, and I agree I didn't.

Q You're saying the Campbells don't say that?

A I would not say that, Your Honor.

MR. HANNI: I object to that, that's argumentative, Your Honor.

THE WITNESS: That's your words.

Q (BY MR. CHRISTENSEN) Do people count?

A You'd better believe they do.

Q Do 2 million people being mistreated in California on parts, is that a pattern and practice, or is that insignificant?

MR. HANNI: I'll object, that's argumentative.

THE COURT: Overruled, he can answer that question if he knows.

Q (BY MR. CHRISTENSEN) How many million people have to be mistreated before it's a pattern, in your mind?

[135] A I can't make that determination without seeing all the facts.

Q Let me ask you about a few more of these, and see if any of these have come to your attention, right out of your own state. Here's State Farm Fire and Casualty versus Gros, G-R-O-S. Out of the Court of Appeals in Texas and Austin, 1991. That's right smack in the middle of your tenure at the insurance commission, wasn't it?

A The period of time would be correct.

Q Involves findings by the court that some people were forced to sell their home because State Farm violated a promise to cover the claim, and there was evidence that there was a self-serving memo used as part of a coverup at State Farm of what had gone on. Does that ring any bells to you?

A No, sir.

MR. HANNI: Your Honor, I'd like to approach the bench. May we?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

Q (BY MR. CHRISTENSEN) Getting back to the Gros case, this, I'll represent to you, is a published opinion right out of the state of Texas, 1991, never [136] came to your attention.

A I don't recall it coming to my attention, no, sir.

Q How many self-serving memos cover an intentional coverup would there need to be at State Farm before the department would decide it was worth looking into?

A I'm not qualified to answer that question.

Q You don't know?

A Why would I?

Q You're here as an expert.

A Not in those matters, I'm not.

Q You're aware -- Apparently you've mentioned a number that we have, I believe, and let me not misrepresent to you, eight appellate decisions out of the state of Texas during the few years that we had research, and about seven more trial court opinions or findings of misconduct on the part of State Farm. We'll save time, and you'll simply agree you don't know about any of them?

A Were all those in the same year?

Q No, they weren't. They were over several years.

A So that's fifteen over several years, is what you're saying.

[137] Q Yeah. The point of this is, you've indicated you would know if things were going on, and I'm probing this to show there are things you don't know.

A No, I said if there was a pattern and it came up through the department, I would know about it. And we have 384 district courts in the state of Texas, and eighty appellate judges. And there's probably 50,000 cases on file in all those courts at any one time. And I'm not an expert in keeping track of all those lawsuits in the state of Texas.

Q You'll readily admit that there's a lot of misconduct by an insurance that would slip right by you, aren't you?

A That's a possibility.

Q Okay. Now, you called the state of Florida as one of your calls?

A Yes, sir.

Q I think there are more findings of misconduct against State Farm in the state of Florida than any other state we've looked at.

MR. HANNI: Your Honor, I'm going to object to counsel testifying. If he wants to do that he ought to get under oath and get up on the stand.

THE COURT: Ask the question.

Q (BY MR. CHRISTENSEN) You're not aware that, [138] in the terms we provided to State Farm's counsel, there are nineteen cases listed in the state of Florida?

A I'm not aware of that.

THE COURT: Mr. Belnap?

MR. BELNAP: I just wanted to voice an objection with respect to the list they gave us, we've taken up with the court before, but a large quantity of cases on this seventy-three case list are trial results that have no bearing on findings of bad faith or the other issues in this case. And the count numbers, I don't think there's any foundation for it.

MR. CHRISTENSEN: As long as we're speaking objection, the court required them to tell us the ones we were wrong on, and they've told us about one.

MR. BELNAP: Your Honor, this is their material.

MR. CHRISTENSEN: It was right in a court order.

MR. BELNAP: This is their material. He's just using numbers, Your Honor. If he doesn't know what they are, and what they're based on, now that we're into this case seven weeks, then maybe he should read those cases before he refers to them.

MR. CHRISTENSEN: I have read them.

THE COURT: All right, let's proceed. Ask [139] your next question, Mr. Christensen.

Q (BY MR. CHRISTENSEN) You know, there's approximately 100 cases here around the country of judicial findings of misconduct on the part of State Farm?

A I'm not surprised, with 40 million policy holders.

Q I'm not talking about mistakes, I'm talking about bad faith. Do you know what that is, by the way?

A Yeah, I think I admitted earlier that individuals processing all these claims are going to make mistakes, and sometimes they're going to be not just badly handled, they're going to be unfair.

Q They're going to be intentional estimates, aren't they?

A That, I can't answer, because I don't know.

Q Isn't that what some of these Texas cases have found?

A You're telling me.

Q You don't know.

A I don't know.

Q Okay. Are you aware that the insurance commissioner this year in Florida has gone to the media and referred to State Farm as a corporate bully?

A You'd have to go into it further to see if I [140] can recall it.

Q You haven't heard that?

A There's a little bit of semblance of understanding. I'm trying to recall what the article --

Q It had to do with State Farm cancelling the hurricane coverage on thousands of homeowners in Florida. Does that ring a bell to you?

A Okay, it does now, yes, sir.

Q So you have heard that?

A Yes.

Q At least as of the time your deposition was taken you didn't know about the various class actions pending against State Farm around the country, or that have been against State Farm in the past.

A And I answered that, I have no knowledge, correct.

Q Now, you've talked about market conduct studies. You testified in your deposition that you're not aware of one done by Texas on State Farm; isn't that true?

A That's correct.

Q State Farm's never been disciplined in Texas.

A That's not correct.

Q Wasn't that what you told me?

A Depends on what it was. I think I mentioned [141] in my deposition that there were disciplinary action fines on late filings.

Q On late filings?

A On late filings of reports, and there's one other instance I've found since the deposition.

Q I don't want you to tell me about that, I don't think that's fair to get into things that you didn't have in your depo, because we haven't seen them. Other than simply late filings, at least as of your deposition testimony, you're not aware of State Farm being disciplined in Texas?

A Not since 1985 that I would be aware of in our computer base.

Q Okay. As far as you know, no state's disciplined State Farm. At least that was your deposition testimony, wasn't it?

A I have no knowledge.

Q And you testified in your deposition that Texas had not found any automobile insurance company, of the several hundred that do business in Texas, Texas had not found any automobile insurance company guilty of a pattern and practice of unfair claims handling; isn't that true?

A To the best of my knowledge, that's correct.

Q Now, the insurance department in Texas is [142] very political, isn't it?

A No, sir.

Q It has been a political football the last few years in Texas, hasn't it?

A Well, that's your description.

Q It's a pretty good one, isn't it?

A No, sir.

Q Isn't it true that you told me in your deposition that in 1993 there had been legislation pushed through the legislature in Texas, because the department had been too politicized, the governor was politicizing the insurance department.

A That's correct, that's what I testified. That reference was state board of insurance.

Q And that change changed it from a three-member board to a single commissioner.

A Single commissioner, that's correct.

Q Now, at that time the insurance companies were upset that the insurance department -- Well, let me back up and give a little background. You were appointed by Governor Clements, was it?

A Yes, sir.

Q He lost his election while you were in office, right?

A Correct.

[143] Q And a Governor Ann Richards was elected.

A Correct.

Q She publicly claimed that the insurance board you were on wasn't doing a good job, didn't she?

A That's correct.

Q And she forced the chairman, or at least encouraged him to resign, didn't she?

A That's correct.

Q And she tried to force you to resign.

A That's correct.

Q And you refused.

A That's correct.

Q And at your deposition you said you told her to go to hell.

A That's correct.

* * *

[146] * * *

Q You had some political connections.

A I would say probably true with respect to Republican activities, yes.

Q Well, you'd been a state legislator, correct?

A Yes, sir.

Q And that's how you got your job.

A No, sir.

[147] Q It had nothing to do with it?

A It had nothing to do with it. The other two gentlemen on the panel that were suggested to the governor were also Republicans.

Q You didn't apply for the job?

A No, sir. I was approached on the job.

Q Your sworn testimony is you didn't actively seek that job?

A No, sir. Where's that in that? Where is it? On which page?

Q In your deposition?

A Yes.

Q You're not willing to admit anything that's not in your deposition?

MR. HANNI: Object to that as argumentative, Your Honor.

MR. CHRISTENSEN: I think that's what he's saying to me.

THE COURT: Overruled.

THE WITNESS: No, when I left the business world, I was looking at entirely something different, when the appointment panel in Clements' period of time contacted me to see if I was interested in serving on the state board, or would be.

Q (BY MR. CHRISTENSEN) Wasn't your testimony [148] in your deposition that you were in the tractor business?

A Yes, sir.

Q And you were going broke.

A No, sir. I said I lost a lot of money. I left the tractor business, not broke. I'm sorry, those are your words.

Q You said you sold out.

A To Ford Motor Company.

Q But you were losing money?

A I lost a lot of money from '85 through '89, that's correct.

Q You needed to get out of the business?

A I made the decision to get out of the business, that's correct.

Q One day you were selling tractors, and the next day you're on the state insurance board.

A I made that transition, that's correct.

Q Now, as part of this change, or some of the changes in the Texas insurance law, the complaint ratios were changed in 1994, weren't they?

A Yes, sir, by the '93 legislature, I believe. They went from premium ratio to a policy ratio, if I recall correctly.

Q Are you aware that the Illinois regulator we [149] had here yesterday, Mr. Rogers, said that Illinois had made the opposite change?

A No, sir, I'm not aware of that.

Q That they had changed from going from ratios relating to the number of policy holders to the number of dollars per premium, because they found the policy holder ratio not very meaningful?

A I guess that's what he testified. I'm not aware of it.

Q And yet that's the system Texas now has.

A They just went to it, right.

Q Didn't some people claim that that may lead to some invalid complaint ratios?

A I'm sure both types would have led to that by somebody's opinion.

Q There are certainly limitations to complaint ratios, aren't there?

A I would agree with that. That's just one factor to be considered by a regulator.

Q This is something we saw yesterday, it was an exhibit to Mr. Rogers' deposition. Where the Illinois commissioner last year warned consumers to view complaint ratios cautiously. He says, "Complaint ratios were never intended as a marketing tool for insurance companies or producers. Unfortunately, they're [150] sometimes used that way." Would you agree with that statement?

A I would agree with that. And we have the same caution in our publicized report.

Q It's similar in Texas to this, isn't it?

A Yes.

Q They shouldn't be used to try to sell things to juries, either, should they?

A That's why I qualified it as a relevant factor among several. It is one factor to consider.

Q Most states don't even have complaint ratios available, do they?

A I found that to be true. They may have them internally, but they're not published like a number of states do.

Q And even the states that have complaint ratios available just share the numbers. They don't let the public actually go look at the complaint files, do they?

A That, I'm not advised on what they do in other states.

Q In Texas is that true?

A No, anyone can get that data in Texas, it's available, and they'll even print it out for you.

Q Let me have you refer to page 55 in your [151] deposition.

A Okay.

Q Line 5, I asked you "Now, are the complaints themselves available to the public, or just the numbers?"

And wasn't your answer, "Just the numbers are published"?

A Just the numbers are published, and the ratios, that's correct.

Q Now, you didn't bring the notes you'd made of your calls around to different people to your depo. Do you have those with you here today?

A I have that one sheet that, in my prior testimony this morning, I enumerated the individuals that I'd contacted, in which states.

Q How about the notes you made during the phone calls?

A I do not have those, no.

Q You testified in your depo you'd left those home?

A Yes, sir.

Q And you still left them home?

A As far as I know. I thought I'd sent those out to, after the deposition in the first part of May I thought I sent those out to counsel.

* * *

[154] * * *

Q (BY MR. CHRISTENSEN) Mr. Rogers, if you could turn to page 60 of your deposition.

A Let the record show, Mr. Reynolds.

Q Did I say Rogers? I knew I would.

A That's all right. I knew who you meant.

Q I spent the whole lunch hour saying I wouldn't say it. Moving to the bottom of the page, to line 17, let me review with you your testimony. And your testimony was May 2nd of this year, was it?

A Yes, sir.

Q I asked you, "I am assuming that you have never reviewed State Farm's claims manuals?"

And you said, "No, sir, I have not."

Is that still true, you've not reviewed their manuals?

[155] A That's correct, I have not seen any State Farm claims manuals.

Q "You're not really familiar with their claims, with what their claims handling practices are?"

Your answer was, "No, sir, not me personally, no."

"Are you familiar with State Farm's PP&R program?"

A No, sir.

Q And your answer was, "You'd have to tell me what the PP&R program is."

A That's correct.

Q And I told you it was performance planning and review, and you said, "No, sir, I am not."

I asked you, "Have you ever heard of that?"

And you said, "No, sir."

I asked you, "Are you aware of State Farm's emphasizing reducing or controlling average pay per claim?"

Your answer was, "No, sir."

MR. HANNI: Your Honor, I want to be liberal about use of depositions, but this is an improper use of one.

MR. CHRISTENSEN: I don't think it is.

MR. HANNI: Well, it is, because you can use [156] them for any purpose on a party, but only for impeachment on a witness, and I object to that.

MR. CHRISTENSEN: As I recall, Mr. Belnap and Mr. Crandall put all kinds of deposition testimony on the screen in cross, not even from the same case.

THE COURT: Overruled.

Q (BY MR. CHRISTENSEN) "Are you aware of any method State Farm has used to reduce or control average pay per claim?"

And your answer was, "No, sir."

I want to explore something with you, to probe your knowledge to some degree. Assume that we've got somebody who's hurt in an accident, it's clear, a clear liability situation, say, maybe somebody, a State Farm insured ran a red light, and someone in the other car's hurt, they have some disability that they'll have the rest of their life as a result. Is a person with that kind of a claim entitled to recover special damages?

A That, I'm not aware of.

Q Do you know what special damages are?

A Not necessarily. You'd have to explain that.

Q They're the economic damages, things that you can put a dollar figure on, such as lost wages, medical bills, that sort of thing.

[157] A All right, go ahead.

Q Are they also entitled to recover general damages?

A Differentiate between what you just explained and general.

Q Are these terms familiar to you?

MR. HANNI: Your Honor, I'm going to object to all this. It's totally outside the scope of direct.

THE COURT: Where are we going, counsel?

MR. CHRISTENSEN: I want to see what his opinions are concerning some of the practices set forth in State Farm's manuals.

THE COURT: I'm going to allow it for that limited purpose.

Q (BY MR. CHRISTENSEN) Okay. Do you know what general damages are?

A Not necessarily.

Q They're the non-economic damages.

A Okay, explain that, economic and non-economic damages.

Q Things like pain and suffering, disfigurement, value for someone's quality of life to be reduced, maybe they can't do some things they used to be able to do, those kinds of things. Would it be fair for a company to teach its people, in a case like I've [158] described, methods to get the claimant to settle just for the medical bills in a case like that?

A I don't believe I'd be qualified to answer that question. I'm not that familiar with the legal terms with respect to damages, and that was outside the scope of my insurance regulation.

Q Okay. I'm going now to page 64 of your deposition. Let's begin on line 19. I asked you the question, "Well, let's assume the insurance carrier has determined that the reasonable fair cost to repair a car is $2,000, and they go out and offer the claimant $1,500. Is that a proper or improper way to increase profits through the claim department?"

Your answer was, "That, I really haven't enough information to answer that question."

A Yes, sir.

Q Then I asked you the question, "You don't see anything wrong with the insurance company offering less than they themselves have determined is the fair value of the claim?"

And after the comment by Mr. Hanni, I said, "What -- "

MR. HANNI: I think we ought to read what I said there on the deposition.

MR. CHRISTENSEN: I'm happy to give you [159] credit. Mr. Hanni says, "That isn't what he said. He said you didn't give him enough information so he could answer it."

Then I said, "What more information do you need?"

And you, Mr. Reynolds said, "What did the claimant determine to be the fair value that he would take for settlement of the case?"

And then I asked you to assume, "Assume the claimant does not know what it will cost to repair his car, he is relying on the insurance company to come up with that figure."

And you said, "I really don't know without actually making that determination myself with respect to what the cost would be to repair the vehicle. The claimant in that instance, I would assume, knows what it would cost to repair his car if he got the estimate."

And I said, "Well, assume he got the estimate from the insurance company."

And you said, "You are making an assumption that he can only rely on the insurance company making the estimate, and in my knowledge that's not the case."

Then I said, "Well, let me ask you this. Do you -- "

MR. HANNI: Your Honor, for the record, I [160] want to object to this. It's an improper use of a deposition.

THE COURT: Mr. Christensen, how far are you going to go with this?

MR. CHRISTENSEN: Right to line 9.

Q (BY MR. CHRISTENSEN) "Anything wrong with an insurance company -- " I think the question was, do you see, the question was, "Well, let me ask you this. Do you see anything

wrong with an insurance company that has determined itself that the cost of the repairs is $2,000, offering their insured less than that figure?"

Your answer was, "Not if they feel that's what is fair and reasonable."

My question was, "What if they know it's not fair and reasonable?"

Your answer was, "I don't have any evidence to make that determination, to answer your question."

A That's correct.

Q Isn't it true, sir, that an insurance company offering less than they know is fair an improper --

A No, sir. It's because a range of value is involved, that's particularly true in bodily injury.

Q Okay. But you've indicated you're really not a bodily injury expert, are you?

A Pardon me?

[161] Q You don't claim to be an expert on bodily injury claims?

A No, sir. I never have.

Q You currently are being compensated as an expert to testify here?

A Yes, sir.

Q As I understand your rates for your expert work range from $175 to $225 an hour?

A That's correct.

Q This is the first bad faith case that you've ever been an expert on.

A That's correct.

Q Did I already ask you this, do you know what bad faith is?

A Go ahead and explain it.

Q You're not sure what that means?

A It means bad faith in dealing with a claimant, in this instance.

Q Do you know what that means in the insurance --

A Bad faith and fair dealing with the claimant, either first or third party.

Q Okay. Now, you've been in -- You're currently semi-retired?

A Yes, sir.

[162] Q You serve on some boards, but those aren't paid positions.

A That's correct.

Q Other than what retirement money you have, the only thing that you do that you get paid for now is your expert work?

A From time to time, yes, sir.

Q And you've been an expert in five other cases?

A Expert or consultant.

* * *

[164] * * *

Q You've always done your expert work for insurance companies.

A So far as I know, that's correct.

Q You've never represented an individual who sued an insurance company?

A No, sir.

Q Or excuse me, never been hired by an individual who's sued an insurance company?

A That's correct.

Q Now, you would concede, would you not, Mr. Reynolds, that this jury, who's seen a lot of State Farm manuals, State Farm individual goals and PP&Rs from a number of years, and a great volume of documents, they've seen a lot of things you haven't seen.

A That's correct.

Q Let me ask you about something else. Were you aware that -- I'm not sure of the date -- several months ago there were people picketing State Farm's offices in Houston and Dallas

because of the way they were being treated on hail damage claims?

A I don't -- I have some recollection, but I have no knowledge of it, that's correct.

Q That was on TV, wasn't it?

[165] A I would have no idea. As little TV as I watch.

Q Okay. Now, you were here this morning when I was asking Mr. Norman some questions?

A Well, I was here in body.

Q All right.

A I wasn't paying a whole lot of attention.

Q Let me ask you this. This is Mr. Peterson's PP&R for the year 1981, it's dated 1980. On here there's some objectives --

MR. HANNI: Your Honor, I'm going to object to this. It's totally out of the scope of direct, and the witness has already testified he doesn't know anything about the PP&R program.

MR. CHRISTENSEN: I just want to ask him if, as an insurance regulator, that he finds anything wrong with this.

THE COURT: I think it goes to his credibility and bias, so I'm going to overrule it.

Q (BY MR. CHRISTENSEN) Here are some goals that were apparently met, to pay people less than book value for automobiles in the coming year. Does anything about that bother you, that apparently 73 percent of the people whose cars were totaled in 1981 received less than book value for their cars?

[166] MR. HANNI: Your Honor, I'm going to object to the form of this question. He ought to fill in what the witness said if he's going to refer to it. There were a lot of qualifications that that witness put to what goes into determining what fair value is, compared to book value. That's a pretty unfair question to this witness.

THE COURT: Reframe the question.

Q (BY MR. CHRISTENSEN) I want to ask you to assume that a goal was set for a coming year for a claims unit to pay less

than book value on a certain percentage of total claim settlements. This would be on cars that haven't even been in the accidents yet. Does anything about that bother you?

A Only the fact that it would be a goal set on prospective happenings.

Q That's not an appropriate goal for a claims unit, is it?

A I'm not so sure, I've never run a claims unit.

Q So you wouldn't know?

A So I really couldn't qualify the answer. The fact that they used something less than book value -- What do you mean by book value?

Q I think it means NADA book value in this [167] context.

A I'm familiar with the equivalent in the tractor business, and I'm familiar with the NADA.

Q NADA?

A Slightly, and I've used it, and I know some banks use it, and generally it's -- Some bank officers I've known in the past consider that overstating value. And I know there's a whole lot of factors, just like in the tractor business, with respect to going up and down from the value printed in any one month or year.

Q That's based on average retail sales, isn't it, in a certain region of the country?

A That's what it's supposed to be.

Q My question, though, is, do you have a concern with goals that talk about specific percentages that will be paid or not paid on claims that haven't happened yet?

A I might go about doing it a different way. I think the intent would be to provide incentive to the department to do a better job of what they're doing.

Q So you would give the claims people incentives to --

A Incentive to do a better job.

Q To pay less?

A No, I didn't say that.

[168] Q An incentive to pay less would be illegal, wouldn't it, for a --

A It might be. I'm not aware of the illegality of it.

Q How much did State Farm's companies pay in premium, or excuse me, collect in premium in Texas in 1994? Is that in your data, there? Would that be more readily available in '93?

A I'm not sure. The price says '94. What I have in my data that I furnished to you previously was the State Farm group premium in 1994 on all regulated property and casualty lines in the state of Texas.

Q And what was that figure?

A $3,076,039,643.

Q Let me have that figure again. Three billion?

A 076.

Q 076?

A 039, 643.

Q 643. What percentage of this does the state insurance department get?

A Just a fraction on maintenance tax, and it varies from period to period.

* * *

[172] * * *

REDIRECT EXAMINATION BY MR. HANNI:

Q Mr. Reynolds, if we turn back to this other sheet that counsel is using, and he used the numbers, here, that he took out of Texas, and then he had you calculate what the total number of claims would be nationally. Do you remember that?

A Yes, sir.

Q Using national population figures, and using the 18 million-plus in Texas, I want you to assume that State Farm writes a total of 66 million insurance policies over the U.S., and assume that 37 million of those policies are auto policies. Now, if we follow Mr. Christensen's example through, we would have to, if

we want to make the same comparison that he was making, we'd want to compare 20,000 with 37 million; is that right?

A Yes, sir.

[173] Q And do you still have his calculator up there?

A Yes, sir.

Q What kind of a percent is that, if you divide 37 million into 20,000? We'll do it both ways.

A It comes out pretty close to one half of one tenth of one percent.

Q One half of one tenth of one percent. Okay. Now, if you did the same exercise using all of the policies, and that would be 20,000 divided by 66 million, what do you come up with?

A Well, it would be less than a quarter of one tenth of one percent. Just without even using a calculator. It would be very tiny. It would be in the hundredths of a percent. Fraction of a percent.

* * *

[181] * * *

RECROSS EXAMINATION BY MR. BELNAP:

Q Divide 20,000 into 14 million claims. This is the number of claims that are made a year, that are handled a year at State Farm. It would be 14 million into 20,000.

A .0014. It's a fraction of 1 percent.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF GORDON ROBERTS, JUNE 11 & 12, 1996

[Vol. 5, R. 10260, commencing at p. 135]

* * *

GORDON ROBERTS called as a witness by and on behalf of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Would you state your name, please.
A My name is Gordon Roberts.
Q And what is your age?
A Fifty-five.
Q And what is your occupation?
A I'm a lawyer.
Q You're here to testify as an expert witness?
A Yes.

Q You have a number of years of experience as a trial lawyer?

A Yes, about thirty.

[136] Q Where is it that you're currently employed?

A I work for a law firm here in town called Parsons, Behle and Latimer.

Q Approximately how many attorneys are in that law firm?

A About 106 right now.

Q Is that now the largest law firm in the state?

A Yes.

* * *

[140] * * *

Q About two years ago, did we ask you to be an expert witness in this case?

A Yes.

Q Did you testify at the trial last October?

A I did.

Q Would you explain briefly to the jury what you've done to prepare yourself to be an expert witness here?

A Over the course of the last couple of years, kind of on and off, depending on when things were coming up, such as I was deposed, for example, a couple of years ago, and I testified at the trial, I'm testifying again today. So over the course of that trial frame, as it was required I would basically -- First of all I've spent time talking to Mr. Christensen about the case and [141] so forth, I spent time, more limited time talking to Mr. Humpherys.

I have spent extensive hours reading a stack of materials that now is laying all over my desk, but it's pounds and pounds, or feet and feet of papers, including specifically the entire correspondence file of Wendell Bennett, which I found to be very helpful as a way to sort of walk through this whole thing.

Q I think the jury knows this, but I want to make sure. Would you explain to them who Wendell Bennett is, as he relates to this case?

A Wendell Bennett, when this lawsuit was filed against Mr. Campbell and the estate of Ospital, Wendell Bennett was selected by State Farm to be the attorney who would represent Mr. Campbell. That was pursuant to State Farm's ability, or right to defend a lawsuit pursuant to the insurance policy. So he was the attorney for Mr. Campbell hired by the insurance company.

Q You've reviewed his file?

A I reviewed his file, which has a wealth of information in it, because it's got all of the correspondence, which gives you kind of a chronological version of all of the things that were happening. It has deposition summaries, correspondence

with the [142] insurance company, correspondence with Mr. Campbell. So quite a voluminous thing, but it's very helpful to get an understanding of the case.

I've read a number of the depositions in the case, I have read extensive portions of the trial transcript in the case, that is the Logan trial. I have read some portions of the trial that occurred last October. I've read various agreements and pleadings and so forth that have bearing on the case.

I've read, looked back and reviewed some of the pertinent legal decisions of the Utah Court of Appeals and Utah Supreme Court having to do with the subject of insurance bad faith, and the duties that are owed by an insurance carrier to its insured. They're cases I was familiar with, but I refreshed my knowledge of them by looking at them in a more recently. That is at least a summary, I think, of what I've done.

Q Have you attempted to memorize all of the different witnesses' testimonies?

A No, I have not.

Q Do you think it would be feasible to do that?

A Well, I suppose, given enough time, I could probably get pretty close to it. But it did not seem important to the opinion, so I didn't do that.

Q Based upon your thirty years of experience, [143] your training, and all of the information that you've reviewed in this case, have you formed opinions with respect to this case?

A Yes, I have.

Q Would you state what opinion or opinions you have, please?

A Well, I have one sort of conclusory opinion, which is, in turn, based on a variety of sub-conclusions or opinions that I have come to.

My sort of final line is that the, in reviewing this thing, the only rational explanation that I can find for the failure of State Farm and Wendell Bennett to settle this case prior to or during the trial in Logan, the only explanation I can find for it is that, together Wendell Bennett and State Farm put State Farm's interests above those of Mr. Campbell and his wife.

* * *

[146] * * *

Q Do you have an opinion as to whether, prior to the excess verdicts in the Logan trial, Mr. Campbell realized that State Farm and Mr. Bennett were putting State Farm's interests over his?

A I do have an opinion.

Q And what is that opinion?

A My opinion is --

MR. BELNAP: May my objection be noted?

THE COURT: It's noted.

THE WITNESS: My opinion is that I have found no indication in the materials I've reviewed that Mr. Campbell was aware, even of the principles involved which created the duties, let alone the fact that they were being ignored by State Farm and Mr. Bennett. In fact, I think he had a completely opposite, from what I can see, completely opposite understanding. Pretty much throughout this thing.

Q (BY MR. CHRISTENSEN) All right. Let me go [147] back to your first opinion. Do you have that in mind? Would you explain to the jury what you have based that opinion on, and the process you've gone through in arriving at that opinion?

A What I tried to do with this thing -- I mean I tried as hard as I could to do it without the benefit of hindsight. It's tempting in this case to use hindsight, but I tried very hard to

be intellectually honest about this. And I went back and tried to reconstruct what I consider to be the important aspects of this case, as they related to Mr. Campbell's exposure, that were known to Mr. Bennett and/or the insurance company prior to the time, or during the time of the trial.

From those facts and expert opinions that I became aware of in that course, what I tried to do was to simply do an evaluation of this case as if I were Mr. Campbell's lawyer. That is representing him and trying to give him good advice about, you know, what he should do in this case. So I've sort of looked at the whole thing to arrive at some judgments about his exposure. And that really includes two very basic types of analyses.

The first thing that you have to look at is the question of liability. And that's a fancy word that [148] simply means, you know, what legal duties did people, the participants in this thing, breach, if any? Who owes who what, under the law? So you have to look at that. How liable are the various players, here? You look at liability --

Q Sometimes, Mr. Roberts, do people use the word "fault"?

A Fault is another, yeah, common way of expressing that. "Who's at fault, here, and how much?" would be another way of talking about that. So you go through an analysis to try to get some sense of that.

The second thing you do, or I did, is to try to get some handle, using my experience, on what a jury would be likely to do in terms of damages, how much money they would award, in this case to Slusher, and how much money they would award in this case to the estate of Ospital, should they find in his favor in connection with the liability case. So that was essentially the methodology that I used.

Q All right. Let's begin with the liability question. Would you explain what you did, and how you arrived at the conclusions you reached in determining where the liability was likely to be placed in this case?

A It's helpful for me to look at this [149] individual by individual, and you start with Slusher. Slusher is the plaintiff in this case. And I think a very important fact, here, that so far as I know, nobody argues with, is that Slusher was not at fault. Nobody said Slusher did anything wrong. Nobody said he was speeding, nobody said he, you know, failed to keep a lookout, nothing. Slusher's driving down the road in his car, in his lane of traffic, doing what he was supposed to be doing. And nobody argues that, and that's very important.

And in juxtaposition to that, you've got Ospital, and you've got Campbell over here, and they are both defendants in this case, and they're --

Q Does that mean, Mr. Roberts -- excuse me for interrupting -- does that mean Mr. Slusher sued both Campbell and the Ospital estate?

A Right, he sued both of them. And so they're out there as defendants in the case. And so what you have is sort of an ideal situation for Slusher in that you have the two defendants pointing fingers at each other. And nobody's pointing fingers to Slusher.

So the first thing I concluded is that, sort of irrespective of what happened between Ospital and Campbell, it is a practically a slam dunk that Slusher is going to win this lawsuit. Because there's obvious [150] fault floating around here, and none of it's his. So Slusher's going to win the lawsuit.

And it's very rare in litigation you can be that dogmatic, but I think in this case you really can be close to that dogmatic. Because in the absence of something really crazy happening with the jury, I don't see any way Slusher loses

this case. And that's very important. It's quite unusual, because typically plaintiffs have at least some fault. They were going too fast, or didn't keep a good lookout, or whatever the case may be. So that's a very central part of my thinking.

Then you start looking at sort of the situation as it pertains to Ospital, let's take him first. The, as I viewed it, and this testimony kind of comes from all over the place, but essentially if you look at some of the conclusions reached by Officer Dahle, who was the expert retained by Wendell Bennett, and you look at some of the information done by Parker, the investigating officer, a jury could find that Ospital was going 80-plus miles an hour.

And as far as I could see, that's about the worst case for Ospital, and he was driving south, he was where he was entitled to be, he was on the freeway, in his lane, and about the worst thing that's going to [151] happen to him is that the jury would find he was speeding. There really weren't any other contentions. There was no contention that he was drunk, or did anything else wrong. So the whole case that Wendell Bennett put on was really directed at that speed.

And that was highly controverted, because there was evidence going the other way. There was evidence from expert witnesses, including Newell Knight, including Professor Watkins from Utah State University, both of whom testified that Ospital, in their opinion, was going at or about the speed limit. So there was conflicting evidence on that.

But as bad as it gets for Ospital, is that he was speeding. In his own lane of traffic, basically doing what he should have been doing.

Then you look at Campbell, and you start analyzing his situation. First of all, there's a lot of evidence in this case, not seriously disputed, I think -- at least what I saw -- by the

defense, that Campbell was himself speeding. He was, himself -- and there's lots of testimony on this -- going someplace between 70, 75 miles an hour.

There's -- I'm not saying there's unanimity on that point, but there's an awful lot of testimony, I think. And also it sort of makes sense, if you think [152] about it. He had to be going faster to pass people who were going, according to their testimony, at or about the speed limit.

So Campbell is speeding, because there's a speed limit in both those lanes. So he's going faster than he should be going. And the other thing about Mr. Campbell is that -- and I think this is both a legal thing, and, in my view, a very common sensical thing -- when you leave your lane of traffic, and go into the opposing lane of traffic to pass, you, as I would call it, you basically assume a great deal of risk about what's going to happen in that lane. And any of us who have ever passed a car, I think, understand that.

And so there's no question but he was passing. There's a lot of question about what he was passing, and you can find evidence in this record, anywhere from he passed a pickup truck with a camper on it, to he passed six vans, and you can kind of pick what you want to pick among that.

But the fact of the matter is, he was passing, he was passing in a situation that was at or near the beginning of a hill, and he was basically, legally, assuming a lot of responsibility. And I don't know if we're going to dig them out, but there are jury instructions given at the trial --

[153] Q Let me stop you right there, and we'll find that. This, I think, was in evidence from the October trial.

MR. CHRISTENSEN: Your Honor, may I show this to the jury as part of this witness' testimony?

THE COURT: Do you have any objection to that?

MR. BELNAP: No.

THE COURT: You may.

Q (BY MR. CHRISTENSEN) I'm going to show you what's jury instruction 39 at the Logan trial, back in 1983.

Before we show this to the jury, would you explain briefly what a jury instruction is?

A Yeah.

MR. HUMPHERYS: May I just interject, Your Honor? It was Plaintiff's Exhibit 6 that was admitted into evidence in the October trial.

THE COURT: Thank you.

THE WITNESS: The jury instructions, which you will learn more about, presumably, here, but the jury instructions, after you get through hearing all the evidence, the judge will give you a set of instructions, so-called instructions, which are all written up. He will read them to you, sometimes they are actually given [154] to the jury so they can take them back with them to the jury room.

And those instructions basically tell you what the law is. You're in charge of what the facts are, you'll be told, but the judge is in charge of what the law is. And so those instructions are intended to be a guide to the jury as to what the law is that they're supposed to apply in a particular case.

So in the case of Slusher versus Campbell and Ospital --

Q (BY MR. CHRISTENSEN) I'll hand this to you.

A I don't know if you can see this. This is one of the jury instructions. But the importance of this is, it basically codifies in a statute and in a jury instruction, kind of what we already know, which is what the obligations are of somebody who's passing.

And what a jury will be told, basically, is that, down here at the bottom, if he violate these things, it could constitute negligence on his part, which is part of the fault determination.

And if you look at these, it pretty much confirms what we already know, "No vehicle should be driven to the left

side of the center of the roadway in overtaking or passing another vehicle proceeding in the same direction unless such left side is clearly visible [155] and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction of any vehicle overtaken.

"In every event the overtaking vehicle must return to an authorized lane of travel as soon as practical and in event that the passing movement involves the use of a lane authorized for vehicles approaching in the opposite direction before coming within 200 feet of any vehicle approaching from the opposite direction."

And then it goes on another statute, "No vehicle shall at any time be driven on the left side of the roadway under the following conditions.

"One. When approaching or upon a crest of a grade or a curve on the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction."

And that gets into play, here, because you all know you don't pass going up a hill. There was a hill here. Exactly where he was on it, Mr. Campbell, is perhaps a question. But there's no question there was a hill, there.

[156] MR. BELNAP: Your Honor, I'd just say I'd move to strike that portion of the testimony. There's nothing in evidence that would indicate that there's an illegal pass in terms of a double yellow line when this was taking place, if that's what the witness is implying.

THE WITNESS: I'm not implying that at all.

MR. BELNAP: Thank you.

THE WITNESS: This goes on to just say that you don't leave your lane of traffic until you first ascertain that that movement can be made with safety.

The point of all this, getting back to my discussion about liability, simply is, part of what you need to do, what I needed to do in analyzing Campbell's potential risk in this case, was to look at, you know, what the law was going to be with respect to passing. And I basically knew it, but I wanted to see specifically.

Q (BY MR. CHRISTENSEN) Now, would the attorney representing Mr. Campbell, Mr. Bennett, have reasonably anticipated that the jury would have been instructed on the law something similar to instruction 39?

A There is no question about that. And not only that, he knew it, because he was there when it was given, helped in preparing it. So it was no surprise to [157] anyone.

So if -- You take all that, and you've got Mr. Campbell with severe legal duties resting on his shoulders as he goes into the passing lane --

MR. BELNAP: Your Honor, there's not a question pending at this point.

THE WITNESS: I was --

Q (BY MR. CHRISTENSEN) All right, let me ask a question to you. You've mentioned the evidence of Mr. Campbell's speed as part of your evaluation of the liability issue in this case, you've discussed passing. Have you completed your, explaining to this jury how Mr. Campbell's passing relates to your analysis, or is there more that you need to say on that?

A There's more I need to say about that, I think.

Q Would you explain that, please?

A Yeah. If you look at this thing all together, Ospital versus Campbell, one way to look at this is that the evidence, with respect to speed of the two, that is Ospital going 80, 83 miles an hour, Campbell going 70, 75 miles an hour, comes very close to simply cancelling out, I think. I mean those things are, order of magnitude, identical. And if anything,

there's more evidence against Campbell on than there is [158] on Ospital in terms of, evidence against Ospital was highly disputed.

So one way you look at it is, it basically cancels itself out, which leaves that the fault is essentially equal, which leaves the passing movement as the, really, kind of the culprit in this case. And that would be a way of looking at it in terms of assessing Campbell's risk.

And I guess another thing that I need to say in terms of my analysis, is that just the common sense of this accident -- I'm not an accident reconstructionist and I don't claim to be one -- but I do drive, and the common sense of this accident, if you just look at it, has, to me, at least, in looking at it, almost got to be that --

MR. BELNAP: Your Honor, let me just say, in terms of common sense, we recognize this witness is testifying as an expert, but this is not a particular area of expertise. If he wants to state facts, the jury can determine those facts that apply to the law you give them.

MR. CHRISTENSEN: Your Honor, I'm not aware of any rule that says experts can't use common sense.

MR. BELNAP: That's the jury's province, Your Honor, to listen to the facts.

[159] THE COURT: I'll allow him to give that. I understand it to be in the context with the opinion he's going to give.

MR. CHRISTENSEN: Yes.

THE WITNESS: If you look at this from a common sense point of view, and just think about it for a minute, you say, you know, Wendell Bennett takes the position that he did, testifying in this court, he takes the position that whether Campbell had been there at that date or not, Ospital would have driven off the road, come back across the road, not off the road, but to the right, across the road, and smacked into Slusher.

I find that to be incredibly difficult to believe. And my view of this thing is that the rational explanation for this accident, as a matter of common sense, is that Campbell was passing in such a way that he created some perceived risk to Ospital, who then reacted to it by attempting to turn right, lost control of his car, and smacked into Slusher.

And I just think that is, there's no real other way to explain this, other than just some strange coincidence, that it just happened to be at this particular point in time of all of his life that Ospital decides to drive off the road and come back across it, just doesn't make any sense to me. So that's what I [160] wanted to add.

Q From your analysis of the evidence, have you concluded that the only reasonable explanation for Ospital's swerving to the right was to avoid Campbell?

MR. BELNAP: Objection, leading.

MR. CHRISTENSEN: Let me rephrase that, that is leading.

Q (BY MR. CHRISTENSEN) What have you concluded is the likely explanation for Campbell's, or excuse me, for Ospital's swerve to the right?

A I think I just said that. I think basically it is, the only thing I see that makes any sense is, he saw Campbell and Campbell presented a hazard to him, and he pulled off, took evasive action.

Q Given this analysis, do you have an opinion as to whether Mr. Campbell was at risk, if the case was not settled, that a jury would find the liability issue against him?

A I do have an opinion about that.

Q And what is that?

A I think he had a very substantial risk that the jury would assess him significant fault in this matter.

Q Are you aware that the Logan jury found Mr. Campbell 100 percent at fault?

[161] A I'm aware of that.

Q Does that surprise you, given the evidence you're aware of?

A It doesn't surprise me, and a different result wouldn't have surprised me a great deal either. They could have found him less than a hundred, but a hundred percent does not surprise me.

Q You mentioned that there are two things that you go through in evaluating the risk in a case like this. We've talked about the liability issue. Before we move past that, I want to have you explain one other matter. Back in 1981 when this accident occurred, did Utah have a law called joint and several liability?

A Yes.

Q And that's since been changed?

A Yes.

Q But that applied to this accident?

A Yes.

Q Would you explain to the jury what the law of joint and several liability was?

A I will do that. I'm trying to think how to do this in terms that are easy for me.

Basically, joint and several liability deals with a situation in which there's more than one person who is involved in causing injuries to another person. [162] If there's just one person, that is if B runs into A, that's pretty easy. B is responsible for the whole thing if B is at fault.

But if you have B and C, and they act together, somehow or another, to cause injuries to A, then that's when the law of joint and several liability comes into play. And basically, what the law in Utah provided up until 1986, when they changed it, was that if B and C are both involved in causing injuries to the plaintiff, that both of them are liable for the whole thing.

And that would be true if C is only a tiny little bit responsible, and B is a great big bunch responsible, or if it's even, or what. No matter what, if both of them are at fault, or if they're both negligent, and both of them cause the injury, then both of them basically are stuck with the entire damage award. And that is joint and several liability, put simply.

Q I'm going to put this right here, hopefully so everyone can still see it. The concept is fairly simple, understanding it sometimes gets complicated. Let me draw a diagram and see if that would help. In this case we had Mr. Slusher, who filed a suit against Mr. Campbell, and also against Mr. Ospital. The [163] possibility existed under these facts that the jury could find both to have some fault?

A That's right.

Q And if that occurred, that would trigger the law of joint and several liability.

A That's correct.

Q The jury in this case found verdicts of approximately $250,000, and for simplicity we'll use that as the figure, here. Let's assume that the jury only found Mr. Campbell 1 percent at fault, and they put all the fault on, all the rest of the fault on Mr. Ospital. Now, do you understand whether Mr. Ospital left any estate or money?

A My working understanding is that he did not. That he was a student without significant assets.

Q And did he have insurance totalling $130,000?

A That's right.

Q And Mr. Campbell had insurance totalling $50,000?

A Well, twenty-five as it relates to Slusher, but another twenty-five as it relates to Ospital. But in the Slusher claim he only had $25,000.

Q So I need to change this number to 200?

A Yeah.

Q If, under my hypothetical, the total was 200, [164] the insurance of Mr. Ospital would be available?

A Yeah.

Q Would that leave $70,000 still owing?

A Right. And basically you're kind of jumping ahead, but -- That is you're already getting into the law of contribution. But --

Q Okay, and we'll get to that in a minute.

A Yeah.

Q Mr. Campbell had insurance totalling how much?

A $25,000 in this scenario, which would deal with the Slusher claim only.

Q So under my example, would even 1 percent fault have left Mr. Campbell owing money beyond his insurance?

A Yeah, if you make the damage assumption that you've made, that's true.

* * *

[166] * * *

Q All right. We've now discussed the liability issue in this case as you've analyzed it. Before we move on, let me ask you one other question. In order to be at risk for an excess verdict, did Mr. Campbell have to be found 100 percent at fault?

A No.

Q Would 1 percent have done it?

A Well, based on the example you just went through, it would, yeah. Again, depending on the amount of the verdict.

Q If the amount's low enough, then the numbers would change?

A Right.

Q Which leads to the second part of the issue that you've looked at, and that is, how much was likely to be owing if the jury found the liability issue [167] against Mr. Campbell?

First of all, let's look at Mr. Slusher's claim. And by the way, Campbell had two claims against him; is that correct?

A That's correct. Ospital was also suing Campbell, claiming that Campbell had caused Ospital's death, through his negligence.

Q Let's talk first about the Slusher claim. Mr. Slusher obviously was not killed, he was injured?

A That's correct.

Q Are there certain things that attorneys who are in the position that Mr. Bennett was in look at to try to help determine the likely value of a personal injury claim?

A Yes.

Q And what are those things?

A Basically you have to understand what the law is, and then you can take that and apply it to the facts. The law is that you're entitled to recover if you're injured by somebody else's negligence, you're entitled to recover your medical expenses, you're entitled, both passengers, you're entitled to recover lost wages caused by the accident, or salary, past and future, you're entitled to recover an intangible amount of money that's referred to an as general damages, which [168] is money for pain, suffering, humiliation, disfigurement, sort of the intangible aspects of being hurt and injured and not having your body the way it used to be.

So if you look at all those things, you can say, "Okay, what are they in this case, and how do they work?" And in terms of medical expenses, the evidence was that Slusher had incurred order of magnitude $20,000, plus or minus in medical expenses. I think it was plus.

There was also evidence that he had received something in the range of $10,000 worth of medical care from a hospital that was rendered without charge. But still had been recoverable, had he sought it, which was another $10,000.

I don't have, frankly, a number on his lost wage claim, other than to say that he had been a welder, and was very badly injured. And then, in terms of general damages, the evidence, I think, is undisputed in Wendell's own analysis of it, that is in his files, is Slusher was very badly injured.

Q Let me review, if I can, with you, some of those injuries. If we need to, there's a letter Mr. Bennett wrote that we can get out. Do you have an understanding of whether he had a broken nose?

[169] A Yeah. Without looking at the list, I'd be kind of guessing, here. I know that they were sort of the top of his head to his toes, but I don't remember exactly without looking at the summary.

Q Do attorneys, in the course of preparing a lawsuit, have access to the medical records of the people that have been hurt?

A Yes.

Q And are they allowed, if they so choose, to take sworn testimony from the doctors that have treated that person?

A Yes.

Q I'm going to show you a letter Mr. Bennett wrote in July of 1983, after most of the investigation had been done in this case. And could I ask you--I'm going to have you set that right there--would you review, beginning with the description, the different injuries that Mr. Bennett describes that he has determined Mr. Slusher to have sustained?

A Yes, what he says, here, is he'd reviewed the hospital records. "You get a fairly good thumbnail sketch of the injuries sustained by Mr. Slusher, including fractures of the left ribs, a tension pneumothorax of the left lung, which would mean that air had escaped from the lung and was in the pleural [170] cavity."

Q Is that a punctured lung?

A Yeah. "A comminuted or displaced fracture of the left arm with avulsion or displacement of the biceps tendon with partial laceration of the brachial artery, a complete laceration of the high radial nerve, which would result in a loss of nerve function and muscle function down the outside of the arm."

Q Does that mean that Mr. Slusher lost part of the function of his left arm?

A Right. "Which would, unless repaired, ultimately result in a partial loss of function of the affected extremity, with the tendency for the hand to become a claw, a laceration into the radioulnary joint of the left arm and avulsion of the brachioradialis," whatever it is, "and superficial branch of the radial nerve, injury to the medial ligaments of the right ankle, which would be a soft tissue grade 2 injury, an open comminuted fracture of the right patella with avulsion of some of the soft tissue ligaments to the," and then it goes on.

Q Is the patella part of the knee?

A Yeah. Then it just keeps going on here to the medial retinaculum and avulsion of the portions of the articular cartilage of the weight-bearing surface of [171] the medial femoral condyle of the right knee, and the laceration of the chin." And then it goes on to talk about operations and surgery and so forth that he'd had.

Q Okay. Did he have four surgeries in Logan and two more in Kentucky?

A I think that's right, yeah.

Q Now, this letter also refers to a report from Mr. Slusher's doctor, Dr. Terry. Do you have an understanding whether Dr. Terry did a whole man disability evaluation on him?

A I think he did. I don't have it handy, but I think he did, yeah.

Q Do you recall whether that was 50 percent?

A I'd like to look at it, but if that's --

Q Let me ask you to assume, for purposes of your testimony, that Dr. Terry gave him a 50 percent whole man disability rating. Is that a significant disability rating, in your experience?

A Very.

Q And Mr. Slusher was in his mid-twenties?

A Yeah. Young man.

Q I've tried to write here on the board as you were speaking, there are general damages, and you've indicated those are the intangibles?

A Uh-huh.

[172] Q The non-economic. Special damages are money damages?

A Yeah. Medical expenses, and wages.

Q Now, would this be past and future?

A Yes. Well, actually the twenty is past and the ten is past, but they would also, any future amounts would also be recoverable.

Q Would an attorney evaluating this case know that if there was evidence that Mr. Slusher would need more surgeries or care in the future, that that would be considered?

A Right.

Q And his wages, would that include past and future wages?

A Past and future wages.

Q Explain essentially what the concept is, there, as far as what the law tries to do in compensating someone who will lose income because of injuries?

A The law is trying to make you whole, basically. So that when you get all through with it, you don't suffer any loss, you know, wage-wise, or medical expense-wise, as a result of the injury.

Q Would an attorney evaluating the case, and a jury, if the case wasn't settled, ultimately be asked to [173] try to project out the money a person would lose for their whole life?

A Yes.

Q And with this serious of injuries, could that be a very large sum of money?

A It could be.

Q Considering all of these factors, does it appear to you that the finding of the jury in Logan of $200,000 for Mr. Slusher was something that Mr. Bennett couldn't have foreseen?

A It was in the foreseeable range, I think.

Q Could the number have been higher?

A It could have been higher, it could have been lower.

Q Now let's talk for a minute about the death claim. Mr. Ospital was killed. Was he approximately nineteen years of age?

A Eighteen, nineteen, something like that. Just starting college, I think.

Q Do juries and lawyers and insurance companies, when they look at a death claim, are they asked to look at the quality of the person who's died?

A Yes.

Q What do you know about that issue as it relates to Todd Ospital?

[174] A There's evidence in the record that he was a pretty outstanding young man, a good student, he had close family, just pretty outstanding young fellow from what I understand.

Q Would the jury also consider burial expenses?

A Burial expenses would be a factor that you're entitled to recover.

Q Would the jury also consider whether the person who died was, had lost wages, and if so, what money they may have contributed to the plaintiff's support through the years?

A If that was a factor, you're entitled to do that. That really wasn't a factor in this case.

Q And would you explain that, please?

A Well, Todd Ospital was a student, and he wasn't really making significant income, so he wasn't supporting anybody, which would be, you know, maybe his family members would be entitled to recover if they'd lost that support, but he really wasn't doing that, so that wasn't a factor. And he wasn't in a situation where he could build up an inheritance, because he was still a student, so nobody could argue that they lost an inheritance from him.

So those, neither one of those would have been particularly significant, I don't think.

[175] Q Is the jury in a death case given any sort of a limit on what they can award?

A Well, no. Typically not. Typically not.

Q Have there been death cases where juries have awarded as much as a million or more dollars?

A It all depends on the case. There have been in excess of a million, there have been cases where it's been, you know, very little. And it all depends on the case.

Q Are you aware of what the jury's award was for the Ospital death?

A It was fifty or something like that.

Q $50,000 plus burial expenses, does that sound right?

A I think that's right.

Q Given what you know of these facts, was that something that was foreseeable to Mr. Bennett and State Farm?

A I think it was on the low end of what was foreseeable, in my opinion.

* * *

[186] * * *

Q All right. Was Mr. Slusher, the plaintiff, deposed, or was his deposition taken in this case?

A Yes.

Q Did Mr. Bennett have an employee in his office prepare summaries of depositions after they were taken?

A Yes. I don't know who -- Somebody in his office, whether he did it or somebody else did it, I'm not sure. But summaries were prepared.

Q We've already had a chance to refer to some of these. Is this the first page of the summary of Mr. Slusher's deposition?

A It looks like it.

Q And it was taken on what date? Can you read it from there?

A It was taken on March 17th, 1982.

Q All right. I want to review a few portions of this with you, and I've underlined these so that we can move more quickly. Are you able to read that from where you are?

[187] A Yes, I am. I appreciate the larger print.

Q Would you read the underlined portion, please?

A "Mr. Campbell pulled out into the oncoming traffic lane and attempted to pass all six vans as they were going down into the Dry Lake area."

Q Okay, let me cover some more of this with you. This is Mr. Slusher's sworn testimony, or at least a summary of it?

A This is a summary of it, uh-huh.

Q Would you read the underlined portion at the top, please.

A "Mr. Campbell continued to pass the vans, and was even with the first van when Mr. Slusher noticed the oncoming car driven by Todd Ospital. He stated Todd's car swerved in an attempt to avoid Mr. Campbell, and that

Mr. Campbell did not attempt to enter his proper lane of traffic until after Todd had passed him."

Q All right, and moving down?

A Bottom --

Q Towards the bottom.

A "In his attempt to go around the Campbell car, the Ospital car swerved into the emergency lane, however, it did not go off the road. Had he not swerved into the emergency lane, Mr. Slusher stated he believed [188] the Ospital car would have hit the Campbell car."

Q Did this testimony make Slusher a dangerous witness for Campbell?

A If believed, it would make him a dangerous witness, yeah.

Q Did Mr. Bennett recognize this?

A He did. There's a memo in his file to that effect.

Q I don't think I have a transparency of that. Did Mr. Bennett, in his deposition, testify that after taking Slusher's deposition, he dictated a memo to his file, or essentially to himself?

A Yes.

Q Could I get you to read the first paragraph of that memo, please, that Mr. Bennett wrote?

A Okay. This is entitled, "Memo to the file. If Slusher's testimony is believed, then Campbell is right in the middle of the litigation filed by both Slusher, and would also be open to wrongful death litigation by the estate of Ospital. Slusher's testimony is, however, contrary to what he told Ken Parker in the hospital, and when we tied him down on that he started back pedaling, indicating that he might have been under the influence of Demerol at the time he gave Kent the statement in the hospital.

[189] "My opinion is that he is a lying son of a bitch. However, we are going to have to be aware that we have a potential dangerous witness on our hands."

Q So did Mr. Bennett recognize Slusher was a dangerous witness for Mr. Campbell?

A Yeah, that's the language he uses.

Q Did he have an obligation to tell Mr. Campbell that?

A My view of that is, I'm not sure he has an obligation to tell him every precise bit of evidence that he comes across. He certainly has an obligation to give him a reasonable understanding and summary of what the situation looks like in terms of Mr. Campbell's risk. And that would include knowing at least generically about things like this.

Q All right, let me move to another witness. Before I do that, by the way, Mr. Bennett refers to Mr. Slusher's allegedly giving Parker a statement that he thought Campbell was not at fault. Was that statement recorded or written, or in any form that was later in a form that it could be shown that Slusher had actually said that?

A I don't believe so. I think it was basically Parker's memory, as I recall it.

Q Did Mr. Slusher and his parents, who were [190] there when this alleged comment was made the night that he made it?

A They did.

Q And did Mr. Slusher, under oath in his deposition, testify to the contrary?

A Yes.

Q At this time did Mr. Slusher have a financial motive to favor Ospital over Campbell?

A At which time?

Q The time his deposition was given, and he gave his sworn testimony. Do you want the date of that again?

A Well, there's one part I don't know about that. If he knew what was going on, I would think that -- He was suing both of them. So he was suing both Ospital and Campbell. And if he knew what the insurance coverage was, if he had

any motive at all that was other than a proper motive, he would have been trying to stick it to Ospital rather than Campbell, because Ospital had quite a bit more insurance that he did.

So I can't see that he had any financial motive to try to exonerate Ospital. I suppose he did have a financial motive to try to include Campbell in the case, since he was suing Campbell.

[191] Q But if he was strictly looking at money, Ospital had more money?

A Right.

Q Or more insurance. Okay. And this was before there were any settlement agreements in the case?

A I think that's right.

* * *

[207] * * *

Q Does Campbell, or someone in a position like Campbell, have anything to gain by trying the case, if it can be settled within its policy limits?

A If you really understood it, the answer is no. He had nothing to gain from this, and everything to lose, in my opinion, by going through with this trial.

* * *

[Vol. 6, 10261, commencing at p. 4]

* * *

GORDON ROBERTS the witness on the stand at the time of adjournment, having been duly sworn, resumed the stand and testified [5] further as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

[6] * * *

Q Now, I want to move on to another area. Did State Farm have opportunities to settle the claims against Mr. Campbell for the policy limits of $25,000 for each claim?

A The record seems to be very clear about that, that they had opportunities throughout the course of the litigation, throughout the trial, up until the time that the verdict finally came in from the jury, where they had repeated opportunities to settle the case.

Q I'm going to review some of those with you. I'm going to show you what's already in evidence as part of one of the exhibits, I believe this particular copy of this letter comes from the State Farm file. Can you read that, Mr. Roberts?

A Yeah. Help me, who's the letter from?

Q Oh, let me show you the second page.

A Okay, all right.

Q All right, first of all, the date of this [7] letter is April 27th,'83?

A Uh-huh.

Q And the trial was September, '83. And did Ospital and Slusher settle without Campbell in June of '83?

A They did.

Q All right. That will put this in the right time frame. Would you read the body of the letter, please?

A "Dear Wendell. I previously indicated to you that we have retained an expert who exonerates Ospital from liability and places the entire blame on Campbell. I have not yet given this report to plaintiff."

Q Is this referring to Dr. Watkins?

A I take it that it is, because I think Newell Knight came in a little later than this.

Q All right.

A "It is our desire to reach a settlement with plaintiff as soon as possible. The discovery is essentially complete as it relates to the plaintiff's case.

"I discussed earlier with you about the fact that State Farm should tender its limits. A limit of $25,000 is too low to risk excess exposure by exposing its insured to personal liability.

[8] "It would be in State Farm's best interest to join with us and unitedly negotiate a settlement with plaintiff. We would insist, however, that State Farm be willing to pay its limits. If not, we will try to negotiate a separate settlement with plaintiff which may not be likely to be favorable to Campbell's interests.

"We intend to meet with Mr. Barrett after the depositions on Monday, May 2nd, to discuss settlement. If State Farm is unwilling to tender its limits at that time, we will proceed to negotiate directly with plaintiff."

Q What, in your opinion, Mr. Roberts, would a lawyer do, who was truly looking out for Campbell's best interest, have done in response to this letter?

A Well, whether in response to this letter, or any of the other opportunities that were offered, it seems to me that a lawyer who was diligently representing Campbell, would have, in writing, preferably, and orally, as well, would have made Campbell aware of the fact that an opportunity existed to settle this case within limits, that he faced substantial risks in the case for a jury verdict over and above his limits which would place his, you know, personal property and net worth at risk, and try to persuade Mr. Campbell that it was in his best interests [9] to make a demand upon the insurance carrier to settle the case at limits. And that should have been done.

Q All right. All right, let's look at what Mr. Bennett did. The date of that letter was April 27th, '83 that we just looked at?

A I think that's right.

Q This is a letter from Mr. Bennett to Mr. Campbell written a few days after that letter?

A Uh-huh.

Q Would you read that first sentence, please?

A Okay. "I'm enclosing herewith a photocopy of a hand delivered letter from Mr. Humpherys, Ospital's attorney, which is quite self-explanatory."

Q Is he referring to the letter we just read?

A I think that's correct.

Q Would you read the next paragraph, please.

A "What Mr. Humpherys is attempting to do is to spook, or coerce you into demanding that State Farm offer your policy limits of $25,000 toward a proposed settlement of the Slusher claim. Farmers Insurance Group, who insured the vehicle that Ospital was driving, has already tendered their policy limits into court, and Allstate, who Mr. Humpherys represents, and who insured Ospital on another vehicle, has a fairly large policy that they are defending him under. I think [10] Mr. Humpherys is trying to save Allstate most all of its money, and get State Farm to throw away their $25,000 into the pot to go along with that that Farmers has already thrown in, in an attempt to settle this case with Slusher."

Q All right. Does that accurately reflect the kind of advice that, in your opinion, Mr. Bennett should have been giving to Mr. Campbell?

A Absolutely not.

Q Let's move to the next paragraph, please.

A "I think that the so-called expert who supposedly exonerates Ospital is a Utah State University professor by the name of Watkins. I do not feel, however, that Watkins really knows too much about this case, inasmuch as he hasn't even spoken with the troopers who investigated the accident, and is only going on what Mr. Humpherys has apparently given him."

Q Now, is Dr. Watkins not only a so-called expert, but an actual expert?

A He is an actual expert who, in fact, as I understand it, was one of the teachers or instructors for Bob Dahle, who was Wendell's expert.

Q When Mr. Dahle would have a difficult case, would he go to Mr. Watkins for help?

A That's my understanding.

[11] Q Now, Mr. Bennett, here, makes some statements to Mr. Campbell about what Watkins knows or doesn't know. Had Mr. Bennett taken Mr. Watkins' deposition?

A No. In fact, he was never deposed, I don't believe.

Q In fact, when Dr. Watkins did give his testimony, did it exonerate Campbell?

A Yes. He -- No, it did not exonerate Campbell, it exonerated Ospital, basically, and put the blame on Campbell.

Q All right, thank you. Let's move on to the next paragraph, if we could, please.

A "I met with Troopers Dahle and Parker on the 27th of April to review the various depositions with them that we had taken, which are basically of yourself, your wife, of Slusher, and some of the other members of the van caravan. And the basic bottom line of the information we were able to give Trooper Dahle and Trooper Parker would make Trooper Dahle conclude that Ospital was traveling a very minimum of 75 miles an hour, and more probably about 83 miles an hour just prior to losing control of his vehicle.It would also lead him to believe that you were pretty basically well back in your lane of traffic before you posed any hazard to Ospital, and there is some indication that one of the [12] other vans behind the pickup truck and a camper very probably pulled out into the passing lane, either to get a better look, or to attempt to pass, about the time Ospital started going out of control. I think the van driver guilty of that infraction or conduct, which may or may not be an infraction, is a fellow by the name of Zucca. One of the other members of the van group has given some testimony that leads me to believe this."

Q All right, among the statements in this paragraph are representations to Mr. Campbell about what Mr. Dahle is

saying. Did we review what Mr. Dahle was telling Mr. Bennett privately yesterday?

A We talked about that yesterday.

Q Now, let me move on down. The statement where he says, "You know the facts of how the accident occurred about as well as anyone," was that true?

A Well, he was there. There were a lot of other people, and other experts who had different views of the matter, so I don't think it's categorically true.

Q All right, moving to the last paragraph that's shown on the screen, there, would you read that paragraph, please?

A Okay. "I want you to also realize that you have a right to retain your own personal attorney, inasmuch as you are being sued for more than your policy [13] limits that you carried with State Farm, and to have independent counsel from him. That would, however, have to be at your expense, and State Farm would not pay for another attorney inasmuch as they are paying for my services to defend you in this matter."

Q Should Mr. Campbell have needed to go out and used his own money to hire an attorney to protect his interests, outside of Wendell Bennett?

A I think not, because he'd already paid State Farm a premium to have them provide independent counsel for him, and someone who would represent his interests. There was no reason for him to take his money and go out and pay for another lawyer. He should have had an attorney who would look after his interests as part of his insurance contract.

Q Let me ask you this. Did, in this fairly serious case, Mr. Roberts, did Mr. Campbell need an attorney who would protect his interests?

A He needed one.

Q From what you've observed, did he have one?

A I think he clearly did not.

Q Let me move on. I'm going to show you a letter dated May 2nd, '83 from Mr. Bennett to Jerry Stevenson at State Farm insurance. And I think it's the next page that I want to discuss with you. Would you [14] read the first full paragraph on that, or second full paragraph on that page, please?

A Yeah, he says, "I really do not believe that Mr. Campbell is going to be at all insistent that we pay limits, or, for that matter, pay anything to settle this case, and in my opinion, Mr. Campbell is very firm on his conviction that he had nothing whatsoever to do with the accident, and that he does not want to give any tribute to Slusher or Ospital as a result thereof."

Q Now, first of all, do you see in that first sentence the use of the word "we," or, "we pay limits"?

A I do.

Q Is that significant, in your opinion?

A It really did strike me when I read it the first time, and it speaks, in my view, volumes. And you ask yourself the question, "Who is we?" "We" is not Campbell, and does not include Campbell. "We" is Wendell and the insurance company. And it seems to me that here's an attorney who ought to be demanding that State Farm pay limits, who's writing a letter being congratulatory of State Farm that, "We don't have to pay limits." It turns the world on its head in terms of what Wendell should have been doing at this time. And indicates his alignment with the carrier to Campbell's detriment. I was struck by that word.

[15] Q If Mr. Campbell had demanded that State Farm pay the limits, and either put that in writing personally or through his attorney, would that have put pressure on State Farm?

A It clearly would. That's the thing you do to put pressure on a carrier. And what you basically demand, that they pay their limits. And even if they don't do it, what that

does, basically, is puts them on notice, creates pressure on them, because they begin to recognize at that point that they are facing a bad faith claim if they fail to do what they're supposed to do.

So it is what is always done by attorneys who recognize that their clients have exposure, or always should be done if you recognize your client has exposure over his limits.

Q If State Farm had decided they didn't want to pay the limits, but wanted to try the case, would a demand from Mr. Campbell demanding that they pay the limits have hurt State Farm's position later in a bad faith case?

A I think it would have.

Q And would it have helped Mr. Campbell's position?

A I think it would have.

Q Does this letter seem to recognize that?

[16] A Implicitly.

* * *

[20] * * *

Q Let me move to a different area. Do you understand Mr. Campbell took the position this accident wasn't his fault?

A I understand that was consistently his position.

Q From reviewing his testimony to this date, do you have an understanding of whether that's still his position?

A I don't know if that's still his position.

Q As an attorney representing people for over thirty years, is it common for a client to take that position?

A I think it's very common, and it's also understandable. As you look at it as an attorney, I mean people do not want to remember things in such a way that puts them at fault in a major disaster which kills somebody and badly injures somebody else. I'm not saying that they're lying, I'm saying that it is sort of human nature for people not to want to take

[21] responsibility for that. So it doesn't surprise me at all that Mr. Campbell would have felt, and wanted to feel that he had no responsibility for this.

Q Is it only uneducated clients that struggle with looking at facts objectively when they're being accused?

A No.

MR. BELNAP: Your Honor -- Excuse me, Mr. Roberts. I'm just going to object for lack of foundation.

THE COURT: I'll sustain the objection. Let's lay the foundation.

Q (BY MR. CHRISTENSEN) Have you observed this situation on a number of occasions over your thirty years of practice?

A Yeah, if you want to talk about education levels, and sophistication levels, I have represented doctors, I've represented lawyers, I've represented big companies, and so I have a lot of experience dealing with sophisticated and educated people.

Q From your observation, are educated people as prone to struggling with viewing their responsibility in a lawsuit objectively, just as uneducated people are?

A Certainly just as much, if not more so. I can tell you, representing lawyers is a real pain in the [22] neck, because they won't ever admit anything. So I don't think it's something that is unique to the lesser educated people in our society.

Q You've mentioned something about lawyers. I want to come back to that in a moment. Have you observed, for example, that doctors who are accused of malpractice have difficulty viewing those things objectively?

A Yeah, clearly they do.

Q Does legal training exempt someone from this? That is if someone has legal training, are they able to view their own fault or responsibility objectively by that fact alone, from what you've observed?

A My experience is it's an inverse relationship, that lawyers are less able to be objective about what they have done than other people.

Q Is it commonly known among lawyers that a lawyer is not wise to represent himself if he is sued?

A The saying is he has a fool for a client if he does that.

Q And why is that?

A Well, the very reason that you're talking about, which is lawyers are really paid for their objectivity, and they don't have it when they're being their own lawyers.

[23] Q Now, we've mentioned Mr. Campbell was saying he wasn't responsible for this accident. What, in your opinion, would an attorney who was truly looking out for Mr. Campbell's interests have done in response to this?

A I think you'd be understanding about it, and you would say to him, "I know how you feel, but -- And you may very well be telling the truth as you see it, and I'm willing to accept that. But we've got to look at this thing, not just from what you're going to say, but there are going to be many witnesses in this case, experts, diagrams, all that, which do not uniformly correspond with your view of this thing. That there are differences of, you know, fact witnesses who are involved in this case who see this very differently than you do, and they're going to testify. And we've got expert witnesses who see this whole thing very differently, and they're going to testify."

And you try to explain that, "Just because you feel this way doesn't mean that's what a jury's going to find. That there are risks involved, here, that you need to appreciate," and you explain that to them. And that should have been done.

Q Is part of an attorney's job at times to tell his client that he's being foolish?

A Yeah, there's a great quote that, an old guy [24] named Elijah Root -- This quote was actually used against me in a

brief one time. "Half the job is to tell his client is that he's a damn fool and to stop." So sometimes you've got to be brutally honest with your clients.

Q Did Mr. Campbell have to admit he was at fault for this case to settle?

A No. Routinely when you settle a case there's always a statement in the settlement documents where the defendant makes it very clear he is not admitting anything. That it's a compromise with disputed claim, and no admission of fault is involved.

Q Mr. Roberts, in your opinion, is it improper for a lawyer to use his client's belief that he's not at fault to manipulating him into not settling?

MR. BELNAP: Your Honor, I'm going to object as far as lack of foundation, calling for a conclusion, and asking this witness to speculate on what's in someone else's mind.

THE COURT: Overruled. Go ahead.

MR. CHRISTENSEN: Let me lay a little foundation.

Q (BY MR. CHRISTENSEN) Have you observed evidence in the file that Mr. Campbell's belief that he was not at fault was used to manipulate him on the [25] settlement issue?

MR. BELNAP: Same objection.

THE COURT: Overruled.

THE WITNESS: There's certainly evidence in the file that Wendell is playing up to Campbell's feelings of innocence in this thing. There are letters in the file congratulating Campbell on his point of view, and telling him that he's right, and telling him that Ospital was, quote, bounding over the hill, unquote, all of which basically play to Campbell's very understandable feeling that he didn't do anything wrong, here. So I think the letters encourage that thinking and perpetuate it throughout this whole thing.

Q And in your view is that proper?

A Well, it's not objective, is the problem. What had to happen, here, is that Campbell had to be made aware -- which it doesn't seem that he was -- he had to be made aware that irrespective of his feelings, and his testimony, that he had serious risks in this case, and he had to be told that so that he could make intelligent decisions.

Q Okay. And I want to touch one other thing and we'll move on. Yesterday we had you read from a deposition summary from Mr. Campbell where Mr. Campbell's own sworn testimony was he got back in [26] his lane one second before the Ospital car went by. Did Mr. Campbell need to be told that his own testimony could be used against him?

A Sure. He should have been.

Q Do you see any evidence that was done?

A No. No.

Q I'm going to show you a letter, which is already in evidence, it's from Mr. Bennett to Mr. Stevenson of State Farm, dated May 10th of 1983. Let me refer you to the third full paragraph. Would you read that, please?

A "Mr. Campbell and I had a very long talk about the matter, and he reiterated to me that he has no desire that State Farm pay policy limits to settle the case, and for that matter, he doesn't desire State Farm to pay anything in a settlement of the case, in that he feels that he had absolutely nothing to do with the accident in question, which he strongly feels was caused solely by the excessive speed of the Ospital vehicle."

Q Does this letter from Mr. Bennett to State Farm raise similar concerns to what we've already discussed?

A It does. And it raises yet another point that I perhaps neglected to give you before, but one of the things you've got to tell your client is that [27] lawsuits, particularly

lawsuits involving automobile accidents, do not resolve the moral issues. You know, and so some people look at lawsuits as a matter of principle, a matter of moral judgment, and they aren't that. They're not intended to do that, they don't do that. Juries don't come back in an automobile accident in a case and say, "So-and-so is morally wrong."

Juries in automobile accident cases shift money from point A to point B, but they don't make moral judgments. And what this is all about is that Campbells -- And he should have been told that. He should have been told, "This is not a trial that's a question of abstract morality or right or wrong. It's a question of negligence." Which, you know, might be very really innocent, and it doesn't involve a moral judgment.

* * *

[31] * * *

Q Okay. In this case, the jury verdict in favor of Mr. Slusher was $200,000, the judgment was less than that, and do you have an understanding why?

A I think there was something to do with no fault payments or something like that.

Q Was there an agreement before trial that Allstate and Farmer's pay Mr. Slusher $65,000?

A Oh, yeah, that's right, they'd been paid some money, that's right.

Q So did the judge in the Logan trial take the $200,000 jury verdict and subtract some amounts out of that to reflect amounts Mr. Slusher had already received?

A Yeah, I think that was like $65,000.

Q Okay. And let me move to that. On June 3rd, '83, did Allstate and Farmers, on behalf of Ospital, go ahead and settle with Slusher without State Farm and Campbell?

A Yes.

Q And was the amount of that $65,000?

A Yes.

Q In that agreement -- First of all, let me [32] ask this. Does the fact that Allstate and Farmers paid $65,000 of their $130,000 limits to settle the claims of Slusher against Ospital, does that tell you that they had concluded that Ospital was the primary cause of this accident?

A All you can read from the mere fact of the settlement is that they concluded they had risk that they wanted to deal with. I don't think you could conclude much more than that.

Q As we discussed yesterday, was even 1 percent fault on the part of Ospital, would that represent a significant risk?

A It could have been a problem, particularly because of Campbell's low limits. And it could have been a problem.

Q All right, now, on this June 3rd, '83 settlement agreement, there is some mention of Ospital and Slusher potentially pursuing bad faith claims against State Farm. And I think counsel for State Farm mentioned in opening statement that the only way that Mr. Ospital and Mr. Slusher could pursue bad faith claims would be if Campbell voluntarily assigned those claims to them. Is that true?

A I don't believe it is.

Q Would you explain why you say that?

[33] A If we take the situation where Campbell has a bad faith claim, it becomes an asset that he owns, as I would look at it. And if Slusher has, or Ospital, or either one of them have a judgment against Campbell, they then have the ability to use legal tools to go latch on to any assets that Campbell has. That would include his house, that would include his car, and it would include his lawsuit against State Farm. It's there, it's an asset, and it can be, in effect, attached, and essentially owned by the people who have the judgment.

Q So where settlement, or excuse me, where there's a judgment -- And let me hypothetically put it this way. If you had a judgment against me, are you limited strictly to taking physical property from me to satisfy that judgment?

A No. If -- For a good example that would be easier to understand, let's say somebody owed you a bunch of money. Let's say among your assets was a receivable, somebody owed you for $100,000. I could go get that, as well as your car or your house.

Q Is it possible that Slusher and Ospital could have used their judgments to take both Mr. Campbell's house and his bad faith claim?

A It would all be a question of, you know, [34] values, basically. They can't ultimately take more than what their judgment would be. So they -- Let's say they have a judgment, hypothetically, for $100,000. They can go, start taking assets from people, from the judgment debtor, as we call him, up to the point that they're paid. They can't get any more than that, but they can get fully paid out of whatever assets they can get their hands on.

Q How are the assets valued when someone seizes them who has a judgment?

A Typically they would be valued at a public sale, and so that if you seized, for example, a car, then there would be an execution sale on that car, the person with the judgment is entitled to come in and bid up to the amount of the judgment, other people are invited to come in and bid, and whatever results from that, either by way of cash from the third party, or whatever the judgment creditor bids against his judgment, or from his judgment, then that's how the value is determined.

Q Are these called sheriff execution sales?

A Yes.

Q Normally do they bring full value of assets?

A Frequently they do not.

Q And so the amount that's credited against the [35] judgment is how much is actually obtained through the sale, not necessarily what the value of the asset is?

A That's true.

Q And are they just, does the sheriff or someone like that simply stand on the courthouse steps or some other place and auction off these assets?

A That's almost literally what happens.

Q If someone wants to appeal a judgment, but they don't want this to happen, that is their property taken and sold while they're appealing the judgment, does the law have a device to take care of that?

A There is a device in the law known as a supersedeas bond, and to put this in context, once somebody has a judgment, they can use these tools I've talked about to go out and immediately start attaching property or whatever, or garnishing or, you know, seizing one way or the other.

The office of the supersedeas bond is that the person who has the judgment against him can go buy a bond from a reputable bonding company of some sort with a triple super duper A rating. And the bond basically is security, in effect, the bonding company comes in and says, "We will pay this judgment in the event that it's sustained on appeal."

And they'll set out an amount in there, which [36] is typically the biggest number anybody can think of that the judgment with interest and costs and everything could add up to, and they set that amount in there.

Once that bond is in place, it operates as a stay, basically, on any of these execution devices or attachments or garnishments or that kind of thing. So the bond becomes the security to which the judgment creditor may look.

Q If you don't post such a bond, do the people who have the judgments, are they free to go ahead and start seizing property?

A Yes.

Q Was it in Mr. Campbell's best interest to have a supersedeas bond posted so that didn't happen?

A Yes.

Q Was Mr. Bennett still his attorney? After the verdicts and judgments?

A He was. It gets fuzzy after a period of time, but certainly he was. And continued basically to sign papers and act as if he was Mr. Campbell's attorney.

Q Did Mr. Bennett act against Campbell's interest in connection with the supersedeas bond issue?

A Well, the history of that basically is that once the judgment was entered, which I think didn't [37] happen until about November, as I remember, of 1983, then Wendell starts analyzing the supersedeas bond situation.

And the thing that would have been in Campbell's best interest is for State Farm to come in and post a bond for the whole judgment, which was substantially over their limits of liability. At no time did Wendell request them to do that.

In fact, he found dubious, in my opinion, legal authority which suggested maybe he didn't have to, they didn't have to do that, which consisted of a 1918 New York case that he drug out of the annals of the law. And basically worked with State Farm in trying to see to it they didn't have to post a bond.

And, in fact, as things turned out they didn't post any bond at all. I don't think they even posted a bond initially for even the coverage, because Wendell concluded that that would be ineffective.

Q If State Farm had actually been willing to pay the judgments in full if they were sustained on appeal, was there any reason for them not to put up that supersedeas bond?

A Would you go through that again? I missed it.

Q Yeah. If State Farm was intending to pay the [38] judgments in full if they were sustained after the appeal, was there any reason why State Farm should not have been willing to post the supersedeas bond when Campbell needed him to do so?

A No. In fact, according to the letters and correspondence, the only reason they didn't post it is they recognized, and Wendell told them that if they posted the bond for the whole amount they'd end up paying it. And so that's the only reason I can see in the record that they didn't do it.

THE COURT: Mr. Christensen, could you bring this line to a close quickly? It's 9:00 o'clock and I'm going to have to recess.

MR. CHRISTENSEN: Okay.

Q (BY MR. CHRISTENSEN) Where did this leave Mr. Campbell, their refusal to put up the bond?

A Well, Campbell's sitting there with, subject to execution, his net worth is available to, had the judgment creditors wanted to pursue it, to go start attaching things.

* * *

[41] * * *

Q (BY MR. CHRISTENSEN) Mr. Roberts, I'm going to shorten this and wrap up a little, as quickly as I can. There's two areas I want to touch with you, and I'll be concluded.

In your opinion, did Mr. Bennett have an obligation to inform Mr. Campbell concerning the law of bad faith as it may have related to his rights?

A I believe he did.

Q Would you explain what you mean by that.

A Well, Mr. Campbell was sitting there, exposed over his limits, and one of the tools available to him was to take advantage of the law of bad faith. And what I think should have happened here is that Wendell should have sat down with him and said, "Look, Mr. Campbell, you have a $25,000 policy, here, or fifty, if you throw [42] in the Ospital claims. You have exposure above your limits. Let me explain to you what the law of bad faith is all about," so you could point out to him that there are certain actions he could take to, in effect, enhance his chances down the road of successfully going back against the insurance company for failure to settle within limits.

And I think that that would have hopefully have led to a strong letter having been written to the insurance company demanding that they settle, you know, whatever needed to happen so that Campbell could maximize his situation under that law.

And so far as I can see, nothing was ever said to him about that.

Q You're talking about the time period before the Logan trial?

A Right.

Q Okay. Let me shift, now, we were discussing some things that happened after the Logan trial, and verdicts, and I think we left off on the supersedeas bond. After State Farm failed to protect Campbell by posting a supersedeas bond for the full amount of the judgments, did private attorneys that Mr. Campbell hired begin efforts to try to work out a way to save Mr. Campbell's assets?

[43] A Yes. He hired some attorneys, I think, in Logan, to help him.

Q Ultimately, over a period of months, was an agreement negotiated which protected Mr. Campbell's assets?

A There was an agreement in, I think it was December of 1984, that served that function.

Q This would have been, what, a year and two months after the excess verdicts?

A A year and -- Yeah, two months after the excess verdict.

Q In the interest of time, I'm not going to go over all the terms of that agreement. It will be discussed in more detail later. But essentially what did Mr. Campbell get out of that agreement?

A What he essentially got out of that agreement was basically the protection of his assets, that Slusher and Ospital would not go against his assets to satisfy their judgment.

Q Was he able to keep a small part of his bad faith claim?

A He kept, I think 10 percent of it.

Q Was Mrs. Campbell able to keep all of her claim?

A Yes, she's not a party to the agreement, and [44] she does have, according to the Supreme Court, or the Court of Appeals, a claim.

* * *

[49] * * *

CROSS EXAMINATION BY MR. BELNAP:

* * *

[51] * * *

Q But the fact of the matter is, this entire time period, right here, the case was sitting at the Supreme Court, and they were in the process of whatever they were doing to come to a decision.

A That's true.

Q Now, you mentioned the fact that there was another appeal in this case; is that correct?

A There was an appeal in the bad faith case.

Q Okay. There were actually two appeals filed. Are you aware of that, after this time period, Mr. Roberts?

A I was aware of the one that resulted in the decision of the Court of Appeals. I was not aware of the other one. I was aware of the one in the underlying Logan case, and then I was aware of the one in the bad faith case.

Q All right, well let me just represent to you, Mr. Roberts, that there were two appeals filed in this case, and the years, you know -- I may stand corrected -- but I think it was approximately 1991 to 1992 that the case was on appeal up to the Court of Appeals. And that's a matter of record that we can check on. And that there was then another appeal in approximately '93 [52] or '94 that you were not aware of; is that correct?

A I don't know the dates of the one I'm aware of. The only one I'm aware of is the appeal in the bad faith case that resulted in the Court of Appeals decision. That's the only one I knew about.

MR. CHRISTENSEN: Your Honor, could we approach the bench?

THE COURT: All right.

(Side bar conference held out of the hearing of the jury.)

THE COURT: We're going to take a very brief standing and stretching recess to allow a short recess. Mr. Roberts, you can take -- Your counsel want to confer with you just for a moment. Let's just stand up and stretch.

(The witness conferring with counsel.)

THE COURT: We'll go back on the record and resume our seats.

Q (BY MR. BELNAP) Mr. Roberts, in the time period that these appeals are pending, while there's a case that's

been filed, and I'll represent to you that the -- Let me first say, you're aware that the judgments that were rendered in, that were entered in November 30, I believe, and December 5th of 1993?

A '83.

[53] Q Excuse me, '83, thank you, were paid in approximately July of '89, are you not?

A I think that's correct.

Q And are you aware, Mr. Roberts, that the lawsuit that we're here on today, filed by Mr. Campbell, was filed in approximately August of '89?

A I hadn't fixed on that date, but I'll accept what you say.

Q Okay. Now, during the time that a case is on appeal, even though it's filed here and it progresses with discovery and gathering of facts and things, while the case is on appeal, the Supreme Court, or the Court of Appeals has jurisdiction of that case, and things stop; is that correct?

A Not all things, but most things.

Q Okay. Would you dispute the fact that the case, because of these two appeals, basically sat while the case was on appeal?

A The bad faith case?

Q Yeah, the case we're here on today, that while this was on appeal, this case was kind of in a holding pattern?

A I don't know. I assume that's true. What I was referring to when I said not all things stop, is that people are still free to attach, garnish, execute [54] and so forth while an appeal's pending if there's no supersedeas bond. That's what I was referring to.

* * *

[55] Q Now, we put up to the jury the December, 1984 agreement, which was admitted into evidence yesterday as 76-D. Is that the document that was up on the overhead?

A Yes.

MR. HUMPHERYS: Do you need our overhead?

MR. BELNAP: No, thank you.

Q (BY MR. BELNAP) Under that agreement, would it be your opinion that that agreement, in essence, was an assignment of Mr. Campbell's cause of action for alleged bad faith to Slusher and Ospital?

MR. CHRISTENSEN: I will object to that to the point it calls for a legal conclusion. I don't have an objection to the point it simply calls for his understanding.

THE COURT: He can testify as to his understanding.

THE WITNESS: I'm sorry, Your Honor?

THE COURT: You may testify as to your understanding.

THE WITNESS: I don't, just perusing it quickly, I'm not sure that the characterization as an assignment is accurate.

Q (BY MR. BELNAP) Okay.

A I would say that it is, Campbell agrees to prosecute the case, and he agrees to distribute the [56] proceeds in accordance with paragraph 2.

Q Now, with respect to those distribution of proceeds, does the agreement also provide that Mr. Campbell will be responsible for 10 percent of the 40 percent contingent fee?

A I think that's right.

Q All right. Now, when you indicated in your testimony that it was foreseeable that Mr. Campbell might incur some attorneys fees, what you were referring to then -- Well, strike that, let me ask you this.

Are you aware if Mr. Campbell incurred some attorneys fees with the attorneys in Logan that you talked about, Mr. Roberts?

A I don't know whether he did or not.

Q All right. Would you dispute the fact that he did incur approximately $800 to $1,000 in fees with the firm of Hoggan and Jensen?

A I'm not competent to dispute it or not dispute it. I just don't know.

Q All right. Now, with respect to the December, 1984 agreement that you have in front of you, that I believe is 76-D, are you also aware, Mr. Roberts, that, I believe it was in May, it could have been June of 1984, that a draft of that agreement was circulated between the attorneys?

[57] A I hadn't focused on that. I know there was correspondence back and forth and meetings going on, you know.

Q And would you dispute the fact, Mr. Roberts, that, in essence, from mid-1984 to when that agreement was signed, the substance of the terms did not change?

A I'm not competent to agree to that or not agree to it.

Q What you are aware, Mr. Roberts, is that there was a settlement that was reached in June of 1983 between Mr. Slusher and Mr. Ospital; is that correct?

A I'm aware of that.

Q And you indicated that that was for $60,000; is that right?

A I believe that's correct.

Q Now, you've seen -- Have you seen the release that was executed and entered into?

A I have.

Q You say you have?

A I have.

Q Okay. I'm going to ask the clerk to mark as the next exhibit that release. And while she's doing that, to speed things along --

MR. HUMPHERYS: It's already into evidence. Did you want to mark it again?

[58] MR. BELNAP: Yes.

MR. HUMPHERYS: I believe it's Exhibit 40.

Q (BY MR. BELNAP) Let me just ask you if this is the document that you have seen before, which is the release, which has been marked as Exhibit 102-D.

A I believe it is.

* * *

[66] * * *

Q (BY MR. BELNAP) Mr. Roberts, let me just have you hold that, and I'll get another copy. This letter accepts the offer of settlement of $65,000, does it not?

A Yes.

Q And in the second paragraph, could you read that to the jury, please?

A It says, "It is also understood that you will prepare the necessary documents setting forth the arrangement for how the claim against Mr. Campbell should be pursued. Particularly if the case is not settled, and it is necessary to bring a bad faith action against Mr. Campbell's insurer."

Q Now, when it says, "It is understood you'll prepare the necessary documents." Is that from the letter referring to Mr. Humpherys?

A Yes.

Q Exhibit 69-D is from Mr. Barrett, the attorney for Mr. Slusher, is it not?

A Yes.

[67] Q To Mr. Humpherys?

A Yes.

Q And as a result of this letter, is it your understanding, Mr. Roberts, that there were two documents entered into, Exhibit 102-D, which is the release, and the June 3rd agreement, which is Exhibit 70-D?

A Yes.

Q Now, you would agree, Mr. Roberts, would you not, that under the law, if a bad faith action was going to be filed, it would have to be filed in the name of Mr. Campbell?

A That gets back a little bit to the question we talked about before, as to whether it can be executed upon. So subject to the ambiguities that we left with that, I would agree.

Q Okay. That if, so that we can have a starting point, that if a case is going to be brought, it has to be brought in the name of Mr. Campbell.

A Assuming that it cannot be seized somehow or another. And with that reservation, I would agree with you.

Q Okay. And if a judgment is entered against someone, and if that person holding the judgment decides to go and collect on it, and they're fully paid, then [68] they don't have a right to get more money than what the judgment says, do they, Mr. Roberts?

A Would you walk through that again for me?

Q Sure. If a person holding a judgment, like Mr. Slusher and Ospital, decide they're going to sell Mr. Campbell's property to pay their judgment, and they get paid, they're not entitled to more money than what the judgment is; isn't that true?

A They are entitled to full payment of the judgment and no more, yeah.

Q And so if Mr. Slusher and Mr. Ospital were going to create an arrangement where they were going to share in any monies in addition to the judgment, monies coming from a case against State Farm, they would not be able to both collect against Mr. Campbell and also be in a position to share in a recovery; isn't that correct?

A I don't think so.

Q Let me back up.

A Do that. It's kind of complicated. But I don't think that's correct.

Q If Mr. Slusher and Ospital have a judgment, okay, and if they decide that they're going to proceed against Mr. Campbell and sell some of his property, and it's paid off, then that judgment becomes satisfied under the law, does it not?

[69] A So far I agree with you.

Q Okay. If, Mr. Roberts, they have decided in their own mind that they're going to let interest bear on the judgments and accumulate, and they also want the opportunity to share in more money, potentially, by going against State Farm, they cannot take this step number 1 and fully satisfy their judgments, and also expect to get step number 2 and share with Campbell. Is that clear now?

A No.

Q Okay, let me back up.

A That's really kind of got more assumptions in it than I can deal with.

Q Let me back up. I apologize if I'm not making this clear. Step 1, we're clear that if they go against Campbell and sell his property to satisfy the judgments, then they've been paid.

A They get paid once under that scenario, that's right.

Q All right. If they have made a decision that they want to just let the judgments sit and bear interest, and they want to put together an arrangement whereby they can share in a bad faith case, they can't both collect on the judgment against Mr. Campbell and be paid here, and proceed to share in the bad faith case at [70] the same time; isn't that true?

A Are you assuming there is or is not some sort of agreement among the parties?

Q I'm saying, Mr. Roberts, that in advance they cannot expect to get paid on the judgment and share in a bad faith recovery at the same time.

A Without some kind of an agreement, I think that's probably true. That is what they could expect, is to get paid once, in the absence of some sort of an agreement.

Q Now, going back to this June 3rd agreement, you would agree that, as between Mr. Slusher and Ospital, that they had decided that if a bad faith case was pursued, that, between them, based upon this settlement, they would share in the recovery of that. Isn't that correct?

A I think that's correct.

Q Down on paragraph 4?

A I think so.

Q That they'd share in one half of that?

A Uh-huh.

Q And we know that ultimately they split that up, with each of them getting 45 percent of any recovery, and Mr. Campbell getting the 10 percent; is that right?

[71] A That was the December, '84 agreement, right.

* * *

[92] * * *

Q Now, in addition to sitting through the [93] trial, he had been represented by Mr. Humpherys as an attorney since December of 1984, had he not?

A In the bad faith case, yes.

Q Mr. Humpherys was acting as his lawyer?

A Yes.

Q And entered an appearance and filed pleadings in the case indicating he was Campbell's lawyer; correct?

A In the bad faith case, yes.

Q Yes. Are you also aware, in terms of this same line of questioning, in terms of weighing the interests of the insured equal to its own, that Mrs. Campbell has indicated that she does not believe her husband was at fault?

A I think that's been consistently her position.

Q That she has indicated that if he was passing six vans, that she would have been alarmed at that type of behavior?

A I think she said that.

Q And that when she was faced with hearing the testimony in the deposition, or at trial, or even last fall, that she indicated these people simply are not telling the truth?

A I wasn't aware that she said that, but --

[94] Q Would you dispute that?

A If you say it, I'll accept it.

Q We've talked about the fact that Mr. Campbell was an educated, professional person?

A Right.

Q That at the time of the accident, he was in satisfactory health to safely operate a vehicle, correct?

A I know of no impairment.

Q That there was no evidence to indicate that he was in a hurry that evening?

A Not that I'm aware of.

* * *

[118] * * *

Q (BY MR. BELNAP) I want to show you what's been marked as Exhibit 98-D, and ask, this is a letter, December 23rd, 1983, from Mr. Hoggan to Mr. Bennett. Have you seen that document?

A Yes.

* * *

MR. BELNAP: Move for the admission of 98-D.

MR. HUMPHERYS: Same response, we have no objection.

[119] THE COURT: Received.

(WHEREUPON Exhibit Number 98 was received into evidence.)

* * * *

EXCERPTS OF TRIAL TESTIMONY OF RICHARD ROGERS, JULY 16, 1996

[Vol. 24, R. 10279, commencing at p. 4]

* * *

RICHARD ROGERS called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HANNI:

Q Would you, Mr. Rogers, state your name, please, for the record.

A Dick Rogers.

Q And where do you live?

A I live in Ashland, Illinois.

Q What is your occupation? What do you do for [5] a living?

A I'm the deputy director of the Illinois Department of Insurance.

Q Mr. Rogers, will you tell us, how long have you been deputy director?

A I've been deputy director for twenty years.

* * *

[6] * * *

Q And then in 1971, you started with the Illinois Insurance Department.

A That's correct.

Q What did you do for them when you first started?

A I was a market conduct examiner.

Q In general what were your duties as a market conduct examiner?

A A market conduct examiner is a person who goes out into the field, into the insurance companies, reviews their files, pulls samples of the entire population, we review the

files from cover to cover and take a look at the way the company conducts its business.

Q And in general what do you do that for? What are you looking for?

A We're looking for trends and general business practices of the insurance companies.

Q And when you say trends, what are you talking about?

[7] A The way the Illinois insurance code is written, and the way our regulations are written, in order to cite a company we don't look for a particular violation. We would have to establish a general business practice, so that we would look for anything that would constitute a business practice.

Q If you, in your examination, see some isolated incident that appears to be a violation, that's not what you're really looking for?

A We would cite that, and probably ask that that be corrected. But in order to establish a violation of the code we would have to establish a practice, yes, sir.

Q You worked as an examiner for how long?

A Approximately two months.

Q Then what did you do?

A I became an examiner in charge.

Q And you had examiners that reported to you?

A That's correct. I would be in charge of a particular market conduct examination crew.

Q And were you part of the examination process as being the chief examiner?

A Yes.

Q Examiner in charge?

A I was part of the examination crew and [8] oversaw the examination.

Q How long did you do that?

A About ten months.

Q Then what happened?

A I became chief examiner.

Q And as chief examiner, what were your responsibilities?

A I basically came into the office and oversaw the operations of all of the examination crews, which at that time was four or five crews.

Q And this is in about 1973 that you did this?

A '72-'73, in that time frame, yes, sir.

Q After that what happened?

A I was the chief examiner for about two years, and then I was made the assistant deputy director, which basically put me in charge of market conduct examinations, the chief examiner, as well as internally the policy forms and rates.

Q How long did you serve, then, as assistant deputy director?

A Until such time as I was made deputy director, which was in 1976.

Q You have been the deputy director since 1976?

A Yes, sir.

Q And you're currently the deputy director?

[9] A Yes.

* * *

[11] * * *

Q And when you talk about market conduct, Mr. Rogers, again, for the court and jury's benefit, what are you talking about?

A Market conduct examiners are divided into several classifications. But for purposes here, basically we're talking, in terms of field examinations, and we're talking about doing market conduct examinations of companies in the field.

Q Now, when you go out to do a market conduct examination, kind of walk us through that so we understand what you're talking about. What do you do?

A A full-fledged market conduct examination would involve taking a look at several areas of the company's business, including their producers, whether or not they're going through licensed people, their advertising, their sales materials, their underwriting.

We would pull files to make sure the files are rated correctly, to make sure cancellations are handled correctly, non-renewals are handled correctly. We would look at several examples in claims, collision claims, property damage claims. We would look at the time frame in which they're handled, we would look at paid, closed without paid claims, to make sure those were handled correctly, as well as several other [12] classifications within that. We would look at approximately fifteen to sixteen different surveys.

Q Now, when you get into the claims files, what are the logistics of that? How do you go about doing that?

A We would pull the entire file, and we would start from the date of the report, and we'd go through, measure all of the time frames, the date of the initial report to the date of first contact. We would look at any correspondence that intervened and measure those dates, the time it took the company to respond to the consumer.

We would look at the date of the estimates, we would look at whether or not the claim was settled in accordance with the amount demanded, if not, why not. We would look, if it was closed without pay, why it was closed without pay. If it was a total loss we would look at the method of settlement.

Q Now, when you walk into an insurance company's office and you say, "I'm the examiner for the state of Illinois, how do you?" if you're going to look at claims files, how do you go about selecting? How do you know what files you're going to look at?

A We would ask for a run of all claims closed during a designated period of time, so that we would [13] have a computer printout of everything that was handled during the period of time that we're doing our market conduct exam. And from that we would select our sample.

As an example, if there were 10,000 claims closed in a particular category, we might pull four or 500 and take a look at those.

Q So you get a computer list from the company of all of the claims that they've got pending.

A Of closed.

Q Of certain kinds; is that right?

A Closed during a period of time.

Q That were closed.

A Yes, sir.

Q But you'd have a list of all of them.

A Yes, sir.

Q And then you would go through that list and you would randomly select whatever files you wanted?

A That's correct.

Q And was there any prior notice to the company which ones you were going to select?

A No, sir.

Q It's just a random selection, out of 10,000 you may pick four or 500?

A That's correct.

Q And then you, as examiners, do you physically [14] take hold of that file and look at it?

A Yes, sir.

Q You go through, from the time the file's opened, and you're able to read whatever's in there?

A That's correct.

Q And that is part of what you call the market conduct examination of the insurance department.

A Yes, sir.

Q How often do you do those kind of market examinations on insurance companies, for example?

A I don't understand the question.

Q I mean how often do -- Do you have any regular time when you do a market conduct examination on a company?

A When we began doing market conduct examinations in 1971, we operated on somewhat of a cycle, and I would take a look at the market share, say, of the automobile business in the state of Illinois, and try and do, on a regular basis, every three or four years what constituted to be about 90 percent of the business. So that those companies would be targeted for routine exams on somewhat of a regular basis.

As time went on, our emphasis changed more, as we found that there were some problem companies that needed more attention, in our opinion, and we got away [15] from the routine examinations and started doing more of target examinations. That is to say, if there is some indication, through the various tools that we have, that we think a company needs to be examined, we can devote our time to that, and not to the routine exams.

So I guess it's a long way of saying, on a normal basis, there is no designated time frame in which a company would be examined.

Q Do you, as the state regulators, have somewhat different responsibilities with respect to a domestic company, that is one that is incorporated under the laws of the state where you are from?

A Insofar as financial regulation goes, that's correct. In that we are the responsible regulator for companies that are domiciled in our state. Market conduct, however, is different, in that basically all companies are treated the same, and all companies would be subject to examination.

Q Now, I think you have told the court and the jury that you, your department is the consumer-oriented department, you don't deal specifically with the financial end of it. Am I right about that?

A I'm aware of what goes on in the financial area, but my prime responsibility is consumer market.

Q Is State Farm Auto Company, State Farm Mutual [16] Automobile Company, is that organized under the laws of Illinois?

A That's an Illinois domestic company, yes.

Q And is that true also of State Farm Fire?

A Yes, sir.

Q Tell us, then, other than your market conduct -- Well, first of all, Mr. Rogers, tell me this. When you are doing your market conduct, what other tools do you have besides your market conduct examination to be able to monitor whether or not there's any kind of a pattern or practice out there that would interest you on the part of an insurance company?

A Actually there are several tools. I'm very much in touch with the neighborhood groups in the city of Chicago, very much in touch with other consumer groups throughout the state, and very much in touch with the agency associations throughout the state, give many speeches in the time frame of a year. So I try and keep my finger, if you will, on the pulse of what's going on.

In 1976 we began publishing complaint ratios, which lists basically all the complaints that the department receives in a given period of time, or on an annual basis, which is

about 12,000 complaints a year. And publishing that in the newspapers in the city of Chicago and down state, virtually any paper that will [17] pick it up, it lists the complaint ratios by category, automobile, homeowners, life, accident, and health, and gives the ratio of the number of complaints to some other given number, it could be number of policies or premium volume, or whatever, and then ranks the companies according to the ratio.

At the time that I quit doing regular examinations and started doing targeted, it was our feeling that we needed something else, so that we were simply not doing examinations, and we developed what I refer to as a market conduct annual statement. This gives us basically, by category, again, it's private passenger auto and homeowners.

The total number of claims a company has, the total number that was open at the beginning of the period, the total number that was open during the period, the total that's open at the end of the period, and from that we can also calculate, obviously, the number that was closed during the period.

The second part of that is, we would get a report that shows the time frame in which those claims that were closed during the period were closed, or how long they were opened. Whether it was zero to thirty days, thirty to sixty, sixty to ninety, et cetera. Except that after it gets over 365 days, the category is [18] over 365 days.

So these kinds of tools we have in place that allows me, basically, to keep an eye on trends as they're developing, and to find out where I should be sending my examiners.

Q Now, this is called a market conduct annual report?

A Annual statement.

Q Okay. Now, if I understood you right, part of that statement is you want to know from an insurance company under a particular coverage -- And what period of time do you use on that annual statement?

A Our annual statement is on a fiscal year basis, it's from July 1st to June 30th.

Q So you want to know how many claims you have pending at the beginning, on July 1.

A How many claims are opened at that point in time, yes, sir.

Q Now, just by way of illustration, then, if we've got 1,000 claims on July 1, that's the number that you want to start with.

A Yes, sir.

Q And then you want to know how many claims were opened between July 1 and June 30th.

A Yes, sir.

[19] Q And for ease of calculation, let's use 10,000 as being the number of claims they've got open during that year, that fiscal year. And the next thing you want to know is what?

A How many are open at the end of the period.

Q If I can move this out just a little bit. Do you see that?

A Yes, sir.

Q Then you want to know how many claims are opened the following July.

A June 30, yes, sir.

Q Or June 30. Okay. So this would be July 1, this is during the year, and then you want to know how many are still open at the end of the year, June 30.

A Yes, sir.

Q So if -- And why do you want to know that, and what does that tell you?

A What we're trying to do is figure out, over a period of time, what the company's practices generally are. What we would look for here is any anomalies, so that if a company had 1,000 open at the beginning, and 10,000 were open during the period, if there normally was 1,000 open at the end, we would know that generally speaking they were handling 10,000.

That, in and of itself, may not tell us [20] anything. But if you look at that over a period of time, as in three, four, five years, and you notice some shift in that, as in year two there was 3,000 claims open, you would know something was happening within the company and that would trigger a reaction such as, perhaps, a market conduct. So what you're looking at is changes in that kind of data.

Q So if there's a significant increase in the number of claims that are open at the end of the period, and if that goes on over a period of time, that tells you something.

A Yes. Also, the report can basically tell you anything. And the report goes further. It asks for the number that were closed with pay, and the number that were closed without pay, so that we can catch, check on those.

If, as an example, however, there were no claims opened during the period of time, that would also trigger an inquiry as to what's going on. If the number went from 10,000, which is a norm, to 15,000 or 20,000, you would want to know why that number had increased. So it generates all kinds of information that could trigger an inquiry.

Q And when you say an inquiry, it could trigger a market examination?

[21] A It could be as innocent as a phone call, or it could trigger a market conduct.

Q Now, the other thing that you want from this annual report, if I heard you correctly, is you want to know the length of time within which certain claims are closed; is that right?

A We would want to know the length of time it took to close every claim that was closed within that period, so that if they closed, again, if there was 1,000 at the beginning and 1,000 at the end, and 10,000 that were opened, we would know that they closed 10,000 claims.

What I would want to know is the time frame in which they closed those 10,000 claims.

Q And you break that down into, if I heard you correctly, you want to know what claims were closed in zero to thirty days?

A Yes, sir.

Q And then you want to know what claims were closed in thirty to sixty days?

A Yes, sir.

Q And then sixty to ninety?

A Yes.

Q Is that the next time frame? Then you want from ninety to 180?

[22] A Yes, sir.

Q And then you want to know from 180 to 365.

A Yes.

Q And the last category is over 365.

A Yes, sir.

Q Now, this is information that you had, or the insurance companies certify to annually.

A Yes.

Q What does this time frame information that you're after tell you?

A Well, it would basically trigger two things. Number one, for property damage liability claims we have a standard, which is the median settlement, that is if you closed 100

claims, at least fifty have to be closed within a period of time. The median settlement standard is sixty days for --

Q Sixty?

A For property damage liability. For physical damage, that is comprehensive and collision claims, the standard is forty days. So we can take a look at this, basically, and tell immediately two things. What is the company's median? And also we can take a look at this, if a company tells us their median, as an example, is forty days, but we look at that and say 60 percent of them were closed sixty to ninety days, I would know [23] immediately that either the company's not telling the truth, or the company has made a mistake.

So it gives me a verification within the report. But it gives me an immediate key as to, number one, have they violated our standards in those two areas, property damage, liability, and comprehensive and collision? The second thing, and this goes basically to my history, is that my opinion is that there is a direct correlation between problems in the period of time, and the period of time in which a company handles claims.

That is to say, those companies that are going to run into a problem with the Illinois Department of Insurance, or for that matter, any department of insurance, are generally going to settle claims in a very slow fashion. Those companies that don't have problems generally settle claims in a very quick fashion. So this gives me a real quick thumbnail sketch of how the company is performing in the marketplace in that context.

* * *

[24] * * *

Q What is State Farm Auto, what is its median for settling property damage claims?

A I specifically don't know. Generally speaking, my recollection is it's in the neighborhood of twenty days.

Q That would be State Farm, and I'll just put State Farm, on property damage its median is about twenty days. What is it on physical damage?

A Again, my specific knowledge, I don't know. My general recollection is it's around fifteen days.

[25] Q Okay. What other information does this market annual statement, market conduct annual statement give you? Does it give you any additional information?

A We also monitor suit ratios. We do it for the purpose of monitoring -- We have not established a standard, so insofar as what's good, what's bad, I don't know. Generally I can tell you, from looking at suit ratios, however, that our feeling when we went into this, into the market conduct annual statement, is that the, quote, good companies, are going to perform reasonably, and the, quote, bad companies are going to stand out.

If you look at the suit ratios, the companies that you would categorize as problem companies are generally considerably higher than what we would categorize as the relatively good companies.

Q Mr. Rogers, have you ever been involved in a market conduct examination of State Farm, the auto company?

A I believe that's true, yes. I think I was in the early seventies.

Q When, to your knowledge, was the last time that a market conduct examination was done of the State Farm Auto Company?

A I would guess sometime in the eighties, but [26] I'm not sure.

Q It's been some time?

A Yes, sir.

* * *

[30] * * *

Q And how are these complaints ordinarily initiated? Do you ever get phone calls?

A It could be initially with a written complaint, it could be initially with a phone call, it could be initially with someone walking into the department.

Q How many phone calls do you get annually, approximately?

A We receive generally somewhere in the neighborhood of 40,000 inquiries a year.

Q When you get a phone call and somebody's got a complaint against a certain insurance company, what is your practice? What do you do to get that reduced to writing?

A We would ask them to write to us, and we could either send them a form, or they could just write to us, basically sending an outline of what it is that they're complaining about, and any supporting documentation that they have.

Q And what do you do with those written complaints, then, when you receive them? Well, first of all, does the department make a determination as to whether it's a valid complaint, or not?

A All complaints, by definition, are valid.

[31] Q So any complaint that's reduced to writing, you treat it as a valid complaint.

A Yes, sir.

Q By definition.

A Yes, sir.

Q You make no attempt to sift that and say, "Well, this isn't very valid, this one is," or, "This one's in the middle"?

A No, sir.

Q Okay. What does this complaint ratio tell you, as a regulator, that you have kept since 1976?

A Over the years I think it gives you an indication of how a company is performing. It would also indicate, if there are drastic swings in it, that something was happening in the company.

* * *

[35] * * *

Now, when you look at these ratios, Mr. Rogers, and you say the fire company was ranked number 2, and the auto company number 5, out of all the companies that you have complaint ratios on, are these considered low, low numbers?

A Yes, they are.

* * *

[39] * * *

Q All right. What about 1994? Do you have a complaint ratio for the auto company?

A .28.

Q .28 for the auto, and do you have one for the fire company?

A .31.

Q What are the rankings for the auto and the fire in 19 -- I put '96 up here. It should be '94, shouldn't it?

A It should be '94, yes, sir.

Q All right.

A The auto company was ranked number 2, the fire company was ranked number 4.

* * *

[42] * * *

Q Now, if you see indicators, here, from your annual report, that suggest that you've got a problem, then what, as a regulator, can you do about it? I mean to verify whether you've got a problem or not?

A Again, it would depend upon the nature of the problem. We can either call the company in, if we can pinpoint the scope of the problem we can call the company in and specifically ask them to address our concerns on a one-on-one meeting.

If we think it's a fairly significant problem, one that requires us to document, we would go into the company, pull our sample, and try and document whether or not it's a general business practice. If [43] it's a general business practice, and we can prove that in a hearing, we can do anything up to and including revoke the company's authority.

Q You can revoke their license to do business in the state; is that what you're saying?

A Yes, sir.

Q Can you also, if these indicators tell you, or suggest it, can you go out and do a market conduct examination?

A That is where we would go out and try and establish general business practices via a market conduct exam.

Q Mr. Rogers, when you do a market conduct examination, if you get involved with a big company like State Farm, for example, if you have indicators that tell you that you ought to go out and do a market conduct exam, if you, as a regulator, want to, do you have authority to require that company to make, to pay for the examination?

A We bill the company for all expenses, including $175 per day per examiner.

* * *

[49] * * *

Q Have you, Mr. Rogers, had anything at all to do with the Unfair Claims Settlement Practices Act or regulations?

A In Illinois we promulgated our act in, I believe in, originally, 1972 or 1973, and have rewritten it four times since. I chaired the task force that rewrote that, or wrote that originally, and rewrote it.

I also chaired the National Association of Insurance Commissioners task force in putting together the model Unfair Claim Practices Act.

Q Was Illinois one of the first, if not the first to promulgate the Unfair Practices Act?

A As far as I know we were the first.

Q And was the Illinois act used as a pattern for the model act?

A Yes, it was.

[50] Q And I think you say that you originally did this in '71 or two?

A I believe I said '72 or '73.

Q '72 or three? Okay. And then you made some revisions in later years?

A Yes, we have.

Q And when was the model act first promulgated?

A I believe the latest -- I'm not sure when the model act was originally promulgated. The latest revision was somewhere around 1988, '89.

Q Have most states adopted the model act?

A I have no idea.

Q Are you aware of the fact that some of them have?

A I believe that some of them have, yes.

Q Mr. Rogers, based on your experience as a regulator, based on your education, your association with the other regulators in the National Association of Insurance Commissioners, your discussions with attorney generals, with your discussions with what you call neighborhood groups, other consumer groups, can you tell us whether or not, based on all that experience and your knowledge, there exists a pattern and practice on the part of State Farm Auto, or State Farm Fire, of cheating insureds and claimants?

[51] A I have never seen any study, never heard any general inquiry that would lead me to draw any such conclusion.

In the alternative, I've seen nothing that would ever lead me to believe that the tools that we have out there would allow a wide range of cheating or unfair practices, that absolutely would not come to my attention, to the consumers' attention, to some regulator's attention. At some point in time it strikes me that somebody has to know, and somebody has to be in a position to make it known. I find it incomprehensible to come to any other conclusion.

[53] Q If, in fact, a person that had a practice of cheating insureds and claimants came to the attention of one of the other fifty-three regulators, would you expect that information to be passed on to other regulators?

A I, again, I think our history is that that's exactly what happens.

Q Does the National Association of Insurance Commissioners have any kind of a database that is maintained for the use of the regulators and the companies?

A Yes.

Q Tell us about that, and what kind of information is available to you, as regulators, on that.

A There's a wide range of data that's collected. But as to the case in point, any time a financial or market conduct examination is called by any state or territory on any company, it's reported to the National Association of Insurance Commissioners, and becomes available on their database.

Any time a report is closed, it becomes available on the National Association of Insurance Commissioners, and is made a part of their database. Any time an order is entered into by any state or territory, it's reported to the National Association of [54] Insurance Commissioners, and it becomes a part of their database.

I, as a regulator in the state of Illinois, can access that database on a daily basis.

Q Now, if such a pattern and practice existed out there on the part of an insurance company, and in particular State Farm Auto or State Farm Fire, is this something that you would expect to know about?

A It would seem to me that, with all of the tools that we have, with all the contacts we have, if there was a conspiracy to cheat, that at some point in time, somehow or another it would come to my attention, yes, sir.

Q Now, let's leave conspiracy out of it. If there were a pattern and practice on the part of just one company, would you expect to know about it?

A Yes, I would.

Q Now, for the benefit of the court and jury, when you lay out the reasons why you believe that if such a pattern and practice existed, you would know about it? Give the reasons.

A Number one, I think the history, basically, shows that, as problems unfold that at some point in time we have found out about them and have responded. Certainly Prudential is a case in point, Metropolitan Life Insurance is a case in point, Capital American [52] Insurance is a case in point.

Our own studies that I alluded to, here, that show in 1980 that there were about seventy-five companies with high complaint ratios, some of them that were significantly high complaint ratios, and today there are the number of companies with ten or more complaints has been reduced dramatically, and no company has a complaint ratio of over 10.

In 1970, the median settlement for some companies for physical damage approached 200 days. Today no company has a median settlement period over 40 days. It strikes me that we have been able to address significant problems, that we have been able to put our resources to good use, and it seems to me that as problems have developed we've been aware of them and have come to the front.

Q And you can access it how?

A Via computer. I have access to their database with my computer at my desk.

Q And you are -- And do you avail yourself of that access as a regulator?

A Rarely. I have my staff avail themselves of that data.

Q But they -- You do have staff people that do look at that on a regular basis?

A Yes.

Q And if there's anything there, do you expect a report from your staff about it? If there's anything that suggests any kind of a problem with a company?

A My staff is very much aware that I don't like surprises, and if there's a problem I'd best know about it.

Q Now, Mr. Rogers, you are aware of the fact that a witness has testified in this courtroom that regulators are very ineffective as far as detecting patterns and practices of cheating insureds and claimants. And he has testified that one of the reasons [55] for that is that you're understaffed, you don't have enough money, you don't know what you're looking for, basically you don't know what you're doing. That's kind of the testimony.

What is your response to that?

A I would think that twenty years ago, that that was probably an accurate assessment. I think in the last twenty years several things have happened. Number one, there's been a tremendous change in focus on the part of each individual state, as well as the National Association of Insurance Commissioners, from financial solvency regulation to market conduct regulation.

In Illinois, as an example, when I started with the state in 1971, there were approximately twenty people in the consumer market division, and that constituted maybe one tenth of the department. Today, there's approximately 150

people on my staff, and we constitute approximately 40 to 45 percent of the department. And of the regulatory working units, that is the financial regulatory division, the consumer market division, we constitute approximately 50 percent of that staff.

I think that the technology has allowed us to do reports, such as the market conduct annual statement, [56] such as the complaint ratio. The reason complaint ratios weren't done prior to 1976 is we simply had no way to calculate, no way to compile the data, no way to make meaning out of what it was.

Technology is allowing us to do things today that we simply couldn't do. So I think the emphasis, the technology, the communicative skills that we have, the ability to meet on a regular basis, discuss on a regular basis problem areas, simply has made whatever the witness you're referring to said completely outdated.

Q And do you, as you sit here today before this court and this jury, feel that you regulators would know if there was a pervasive pattern and practice of an insurance company out there to cheat insureds and claimants?

A If there was a general practice such as the one that you're describing, and on the scale that you're describing, I would find it almost impossible to believe that at some point in time that I wouldn't be made aware of it.

* * *

[61] **CROSS EXAMINATION BY MR. CHRISTENSEN:**

Q Mr. Rogers, you've talked a lot about market conduct exams. Where you actually go look at a company's files out in the field. You haven't done a market conduct exam on State Farm for about twenty-five years, have you?

A I would think it would be more like twenty years.

Q But it's been a long time.

A It's been a while, yes, sir.

Q That's both fire and auto?

A Yes, sir.

Q Now, Mr. Yancey, who's going to be a witness for State Farm in this case, who was also a witness for State Farm in the trial last year, arranged for you to be a witness in this case; isn't that true?

A He asked me if I would consider it, yes, sir.

Q He's a friend of yours of about ten years?

A He's a professional acquaintance, yes, sir.

Q You consider him a personal friend, don't you?

A Yes, I do.

Q And he's also been a friend to Mr. Hanni for about thirty years, do you know that?

[62] A I have no idea about that.

Q Now, Mr. Rogers, you've worked at the insurance department in Illinois for over twenty years.

A Yes.

Q Your department has received literally thousands of complaints against State Farm over those twenty years.

A We have.

Q And yet you claimed under oath, in your deposition, that you did not know of a single instance that State Farm has paid less than fair value on any claim; isn't that true?

A I don't recall saying that, no.

Q Let me see if I can help you remember. If you said it, it wouldn't be true, would it?

A Pardon?

Q If you said that, it wouldn't be true, would it?

MR. HANNI: Let's give him a copy of the deposition.

MR. CHRISTENSEN: I'm asking first if it would be a truthful statement.

THE COURT: He can answer that question, Mr. Hanni.

MR. HANNI: Pardon me?

[63] THE WITNESS: Would you repeat the question.

Q (BY MR. CHRISTENSEN) If you said that, that you're not aware of a single instance in all of your years at the insurance department, that State Farm had paid less than fair value on a claim, if you said that, it would be an untrue statement, wouldn't it?

A If I said that, it would be an untrue statement, yes.

Q Okay. Because you know of a lot of instances where State Farm has paid less than fair value, don't you?

A I'm sorry, I'm not aware of that specifically, no.

Q So is your testimony today that you are or are not aware of instances where State Farm has paid less than fair value?

A I'm not specifically aware of any instance, no, sir.

Q All right, let's look at your testimony on page 49 of your deposition. Can you turn to that, please?

A Yes, sir.

Q Are you on page 49?

A Yes, I am.

Q Would you look at line 13, please.

[64] A Yes.

Q All right, I'm going to read the question you were asked. "Are you aware of State Farm ever paying a claimant less than fair value of a claim?" And what was your answer?

A "No."

Q Question. "I assume you would agree with me it must happen?" And what was your answer?

A "I have no direct opinion on that."

Q And then I said, "You don't know one way or the other?"

MR. HANNI: What page are you on?

MR. CHRISTENSEN: Forty-nine.

Q (BY MR. CHRISTENSEN) And your answer was?

A "I have no knowledge of such occurring."

Q You said, "I have no knowledge of such ever occurring."

A Yes.

Q That's still your testimony?

A I have no direct knowledge of such ever occurring, yes.

Q Well, in your testimony you said, "I have no knowledge of such ever occurring," didn't you?

A I said, "I have no knowledge of such ever occurring."

[65] Q Okay. As far as you are aware, all of these thousands of complaints that have been filed over the years against State Farm with your department have all been invalid and groundless; isn't that true?

A That's not true.

Q Now, in your deposition you claimed that you routinely look at court cases involving insurance companies. Do you recall that?

A I recall saying the department routinely looks at court cases.

Q You don't?

A If they're called to my attention I would. Do I spend my day looking at court cases? The answer is no.

Q But didn't you say that you routinely look at court cases?

A On what page?

MR. HANNI: What page are you on?

MR. CHRISTENSEN: I think I'm on 50.

THE WITNESS: I don't see anything on page 50.

MR. CHRISTENSEN: I don't see it on 50, either.

Q (BY MR. CHRISTENSEN) How about 48? Do you see line 10, there, on page 48?

[66] A Yes.

Q Did you say, "Routinely we take a look at court cases, yes"?

A Yes, I did.

Q Now, you testified you go to about every one of these NAIC meetings, and that's four times a year; isn't that true?

A Yes.

Q And they last about five days each time?

A Yes.

Q And you talk about industry problems?

A Yes.

Q And you said if State Farm was out there doing things they shouldn't be doing, you'd have certainly heard about it.

A I believe that's what it says.

Q And that's essentially what you've said today, isn't it?

A I believe that's correct, yes.

Q And your statement referred to both State Farm Fire and State Farm Auto; isn't that true?

A It would have, yes.

Q I asked you if you knew of any punitive damage verdicts against State Farm, you said you didn't.

A I believe that's correct.

[67] Q Is that still true?

A Yes.

Q Has State Farm informed you that we've provided them with a list, a large number of court cases around the country, where State Farm has been guilty of, or been found guilty by different courts, of misconduct, including bad faith or punitive damages? Do you know about anything like that?

A No, sir.

Q In your deposition, you said you didn't even know what a bad faith lawsuit was, didn't you?

A I believe I said that, yes.

Q Is that still true, or have you learned what they are now?

A Generally speaking, I have no direct knowledge of what that would be.

Q You don't know what a bad faith lawsuit is?

A Generally speaking, no, sir.

Q And by the way, your deposition was just taken, just shortly before this trial started, on April 23rd; isn't that true?

A I believe that's about right, yes.

Q I remember that well. I found myself at 3:00 in the morning driving a rental car across Illinois the night before. Do you know that this is a bad faith [68] case?

A I have very little knowledge of this case, sir.

Q Do you know this is a punitive damage case?

A I have very little knowledge of this case.

Q All right. I asked if you knew what excess exposure was, something that's been discussed a lot in this trial, and you said you thought it had something to do with an umbrella policy. Do you recall that?

A I believe I said something along the lines of it's coverage over certain limits, and you suggested it was an umbrella policy.

Q And you said yeah, that's what you were talking about. Remember that?

A I said something to the words of, "Yeah."

Q Do you now know that excess exposure refers to a lawsuit where the insured could be found liable for more than their insurance limits?

A I beg your pardon, I didn't understand the question.

Q Do you now understand that the term "excess exposure" means a lawsuit where someone could be found liable for more than their insurance?

A I believe the original question was, do I know what excess coverage was, and I explained that an [69] excess coverage policy was something like an umbrella policy. I don't believe I said anything about a lawsuit.

Q Okay, well let's clear that up, should we? Would you turn to page 45, please?

A Sure.

Q All right, beginning on line 19.

A Okay.

Q I said, "Are you familiar with the term 'excess exposure'?" Do you see the word "exposure" there, not the word "coverage"?

A Yes, sir.

Q I said, "Are you familiar with the term 'excess exposure' as it relates to automobile insurance?"

Your answer was, "Yes, sir."

A Yes, sir.

Q Question. "What does that mean to you?"

Answer. "It means a coverage over a certain level."

Question. "It means coverage over a certain level, like an umbrella policy?"

And you said, "Yes, sir."

A Yes, sir.

Q Do you now have an understanding of what [70] excess exposure means?

A In the context of what?

Q In the context of automobile insurance.

A I understand what excess coverage in that context means. Excess exposure, I assume, would mean something along the lines of a court awarding something over and above policy limits.

Q Okay. Now, I asked you if you knew about any RICO cases against State Farm around the country, and you said no, right?

A That's correct.

Q And I asked you if you knew of any class action lawsuits against State Farm, and you said you only knew of one, and that was one about fifteen years earlier in California. Do you recall that testimony?

A Generally speaking I recall the questions, yes.

Q Now, have you learned since your deposition that there's quite a few class action lawsuits against State Farm around the country?

A I have not done any preparation for this, no, sir.

Q You don't know of any class actions against State Farm, other than the one you mentioned, that fifteen-year-old one in California?

[71] A I don't -- I know of the after-market parts litigation that we're talking about.

Q The one in California.

A I believe that's correct.

Q That was an old one that you referred, you thought it was about fifteen years old?

A Generally speaking I think that's probably about right.

Q Okay. Well, I want to get into that with you in a minute. Now, you said that you were chairman of an NAIC -- and that's this National Association of Insurance Commissioners -- you were chairman of an NAIC committee to write a regulation for the use of salvage yard parts and after-market parts.

A That's correct.

Q So you were tuned in to that issue.

A Yes, sir.

Q But when I took your deposition a few weeks ago, you never mentioned that there had been a class action on that very subject in Illinois, right in your state, did you?

A No, sir.

Q You didn't know about it.

A No, sir.

Q Do you take any newspapers in Illinois?

[72] A Yes, sir.

Q Do you take the Chicago Tribune?

A Yes, sir.

Q Is that the largest paper in Illinois?

A I would presume that it is, yes.

Q Do you try to read articles that relate to insurance cases?

A I try to.

Q Let me show you one, this is from a computer service that's a database for newspaper articles, that's why it looks like this instead of a newspaper. I'm going to show you an article from June 8th of 1994. You were in the Illinois insurance commissioner's office as of this date; isn't that true?

A That's correct.

Q You'd been on the committee to write proposed regulations for after-market parts?

A That's correct.

Q Were you taking the Chicago Tribune in 1994?

A The department takes the Tribune, yes.

Q Okay. I want to review this with you. Or at least the parts I've underlined.

"If your car sports a replacement fender built in Taiwan, or a bumper maue in South Korea, you may be able to switch it with one made in the U.S. under [73] a proposed class action settlement reached with State Farm, the state's largest auto insurer. State Farm said it will begin mailing notices of the settlement to policy holders Thursday. The company said up to 80,000 policy holders could be covered by the terms of the settlement."

Then I'll go down, and we'll skip through some of this. "The suit was only in Illinois, but this should send ripples through all states."

And then moving on down, "Under the settlement, State Farm said it will guarantee like-kind replacement crash parts, both for fit and corrosion resistance, for as long as the policy holder owns the vehicle, and it agreed to offer that guarantee for at least three years following the settlement."

And that article continues, and there's parts in the article that talk about, insurance companies say that parts are just as good, and then at the end of the article it says, "The big three domestic auto makers and most major Japanese auto makers, however, long have argued that these non-original equipment parts, often built in Taiwan or South Korea, don't meet original equipment specifications in terms of fit and finish, safety, or rust resistance. In most cases the consumer doesn't realize that the words 'like kind' on the repair [74] estimate mean that he or she is getting a fender built in South Korea to look like the original, rather than one built in Detroit or Japan that not only looks like the original, but meets the same specifications and tolerances."

80,000 people in your state, apparently, according to this class action settlement, were entitled to either have their parts replaced, or money, because of claims made against State Farm with respect to the use of after-market parts. And you didn't know about it?

A That's correct.

Q And you didn't do anything to investigate that, never have investigated the use of after-market parts in Illinois, have you?

A I would respectfully disagree with that.

Q Didn't you tell me that in your deposition?

A No, sir.

Q Well, let me make sure I'm not misquoting you. Let me refer you to page 52, if I could, please. Beginning on line 15.

A Yes.

Q Do you see the question, "Are you aware of any class action lawsuits pending against State Farm?"

A Yes.

[75] Q Then you tell me about the California case from fifteen years before. And then if you'll turn to page 53 --

A I believe -- You asked the question, "Was it in Illinois?" And I told you I thought it was in California.

Q Right.

A That could have been the Illinois case.

Q But that wasn't fifteen years before your depo, it was two years before, wasn't it?

A I have no idea. I know it was settled in '94, or whenever the paper was.

Q Anyway, then going to the top of page 53, line 3.

A Yes.

Q I said, "Is that something you investigated here in Illinois?"

And you asked, "As regards State Farm?"

And my question was, "Yes."

And you said, "No, sir."

A Yes.

Q So you'd never investigated State Farm's use of after-market parts in Illinois; isn't that true?

A I think, in context, the questions go on to say, basically, "Was that fifteen years ago, the [76] allegations?"

And I told you, basically, that I further was chairman of the task force following that. That, in fact, I was aware of after-market parts, and had addressed the question.

Q I asked you the question, "Is that something you investigated here in Illinois?"

And you said, "No."

A As regards State Farm specifically, that's correct.

Q Okay.

A Not as regards after-market parts in general.

Q And so, in spite of the fact that there was a court settlement indicating that 80,000 people had been mistreated by State Farm, you didn't investigate.

A Number one, I wasn't aware of the settlement, I'm not generally made aware of a settlement. Settlements are settlements. They're not a decision of a court, they're simply a settlement.

Secondly, that would have been sometime during the period, or not relating directly to my regulation.

Q Even though you're chairman of a committee on after-market parts.

A Was chairman.

[77] Q You weren't in '94?

A No, sir.

Q So you didn't pay attention to that.

A Once the model regulation was put in place, and once our Illinois regulation was put in place, I've tried to be made aware and cognizant of what's going on in regards to my regulation. Am I aware of everything else that goes on? I try to be, but in all honesty, as relates to the Chicago Tribune, I get news clippings every day that are that thick. So --

Q That settlement wasn't just in the Chicago Tribune. Wasn't it in a number of papers?

A I wasn t even aware it was in the Chicago Tribune, sir.

Q Is that a minor deal, as far as you're concerned, 80,000 people?

A I have -- The answer to the question is no. But I have no idea what context that appeared in the paper. I mean, was it a headline story? Was it a back page story? What was it?

Q Well, it was in the paper. And you didn't hear about it.

A That's correct.

Q It was also in the court, wasn't it?

A Apparently there was a settlement, yes.

[78] Q All right, let me move on. Here's another Chicago Tribune story from 1991, it says, "Suit says," and the headline on it was, "Suit says State Farm defrauds customers."

If someone's claiming that State Farm or another insurance company in your state defrauds somebody, isn't that something you ought to be looking into?

A Yes.

Q This goes on to say, "A Chicago woman filed a class action lawsuit against State Farm Mutual Automobile Company charging the giant insurer's method of paying claims under uninsured motorist policies defrauds customers." Were you aware of this one?

A No, sir.

Q Is fraud something that you're supposed to be looking for?

A Yes.

Q You didn't do anything about that one?

A I wasn't aware of that one, sir.

Q Okay. Here's the Chicago Tribune from '92, headline, "State Farm will pay 70 percent of rejected claims. State Farm Insurance automobile policy holders who have had their medical claims rejected in the last thirteen years are due refunds under the terms of a [79] settlement reached in a class action lawsuit Tuesday."

And it goes on to provide that, "The company will be paying between five and $10 million, and that there were more than 5,000 policy holders who filed suit in 1989."

Were you aware of this class action?

A No, sir.

Q Do you know if it had anything to do with the other article I just put up?

A No, sir.

Q It looks like a similar subject, doesn't it?

A I don't know, sir.

Q If 5,000 policy holders, over a thirteen-year period who have had their medical claims improperly denied, is that a minor deal that's not worth your attention?

A No, sir.

Q You didn't know about this?

A No, sir.

Q Let me show you another article from the Chicago Tribune, this one's recent, January of this year. The body of the article where I've underlined it says -- And this, by the way, for the record, is January 28th, 1996.

"Part of a deal made to settle a class action [80] lawsuit, State Farm Insurance Company has agreed to redo collision repairs back to 1987 for California policy holders dissatisfied with repairs made with replacement parts.

"The suit, and others like it, reflect public concern over the growing use of cheap parts for collision repairs. State Farm agreed to similar terms with Illinois policy holders in 1994, and a suit pending in Florida alleges that the insurance company violates the state's law that no insurer shall require the use of replacement parts in the repair of an automobile unless the parts are at least equal in kind and quality to the original parts in terms of fit, quality, and performance."

Were you aware of this?

A No.

Q Do you know how many people were affected in this California lawsuit?

A No.

Q In the class action settlement?

A No.

Q Any idea?

A No.

Q Would it surprise you if I told you it was over 2 million?

[81] A No.

Q Now, these meetings that you go to where you discuss problems with all the people from around the states, apparently none of this has ever come up.

A I think there were several things that come up. Number one, the general question of after-market parts has come up. Number two, the general concern with class action lawsuits has come up.

Q But you don't know about them.

A Do I know about the specific ones that you've mentioned? No, sir.

Q You told me you didn't know about any except an old fifteen-year-old one in California; isn't that true?

A I told you I know of no specific cases against State Farm.

Q Now, earlier this morning you testified that it was inconceivable to you that State Farm could be mistreating any significant number of people and you wouldn't know about it. I don't claim that's your exact testimony, but that's basically what you said, isn't it?

A I believe that's true.

Q And you said that because you go to different meetings, and you interact with people from every state in the union, and you talk.

[82] A Yes.

Q Well, let me see if you've heard about any of these others. I'm looking at the state of Pennsylvania. And we've provided copies of these materials to State Farm's counsel. They haven't shown any of these to you relating to class actions?

A No, sir.

Q Have you ever heard of the case of Brownell versus State Farm Mutual Insurance in Pennsylvania?

A No, sir.

Q Notice mailed to 1.5 million members of the class? State Farm, the claim is that State Farm denied medical payments pursuant to peer review performed by a company which State Farm paid on a contingency fee basis. That would be illegal, wouldn't it?

A I'm sorry, not necessarily.

Q Isn't it against the Unfair Claims Practices Act to pay a doctor a percentage, or a kick back of what he saves the company after he looks at people?

A I'm not familiar with the specific section that relates to that, no, sir.

Q That practice wouldn't necessarily bother you if it was going on.

A I didn't say that.

Q That would certainly bother you, wouldn't it?

[83] A I didn't say that.

Q You don't know if it would bother you or not.

A It would depend upon the specifics of the case.

Q Apparently in your meetings and your dealings around the country, you haven't heard about these allegations being made.

A No, sir.

Q Again in Pennsylvania, Croment versus State Farm Mutual, alleges -- And the members of the class, I'll represent to you, are estimated to be 800 people. The issue there is State Farm's denial of post-mortem work loss benefits required by Pennsylvania no-fault statute. Have you ever heard of that?

A No, sir.

Q You didn't know that resulted in a judicial finding?

A No, sir.

Q How about Pennsylvania, the case of Gilderman versus State Farm, involving 100,000 homeowners policies?

A No, sir.

Q The allegation there--and by the way, there was a confidential settlement in this case--was that State Farm systematically withheld 20 percent of the [84] replacement cost estimate when a homeowner rebuilds without the services of a general contractor as a makeup for overhead. Have you ever heard of that practice?

A If it was confidential --

Q Well, the settlement was. The lawsuit wasn't.

A No, sir, I wasn't aware of it.

Q You're not aware that there was a claim that 100,000 homeowners policy holders had been shortchanged by 20 percent on rebuilding their homes?

A I'm sure there are suits filed everywhere, every day, that I'm not aware of.

Q But I'm now referring to ones that involve hundreds of thousands, sometimes millions of people, and you haven't heard of any of these?

A I'm sure that there are suits filed everywhere, every day, that I'm not aware of.

Q Let me move to Texas. Are you aware there's a recent class action filed there regarding State Farm's practices on the use of after-market parts?

A No, sir.

Q That's the May case. Also in State Farm, or also in Texas, Hang Lee Switzer, et al., versus State Farm Lloyd's. It's a recent case which hasn't been certified, but there's a request to certify several [85] thousand people in a class, claiming that State Farm has a systematic practice of denying hail damage claims for damage to roofs. And the claim is it's a violation of the Texas Deceptive Trade Practices Act, and it's bad faith. You haven't heard of that one?

A No, sir.

Q This one's a little different, let me see if this one's come to your attention as you interact around the country. This is from Louisiana. And I'm not sure I can say this right, I'll spell it, G-U-I-C-H-A-R-D versus State Farm Fire and Casualty. An estimated class of 1,500 people in Louisiana.

The claim here is that State Farm -- And by the way, this is a RICO, as well as a class, claim. The claim is that State Farm systematically obtains consumer credit reports on claimants who file claims on homeowners policies, and they

also illegally obtain bank statements, and then they use this information to determine what claimants are hurting for money so that they can be pressured into accepting settlements that are less than fair. Have you ever heard of that?

A Specifically, no, sir.

Q If that's true, that would certainly deserve investigation, wouldn't it?

A If that's true, I would think that's probably [86] correct.

Q That's never come up in any of your meetings?

A No, sir.

Q I mentioned the --

A I would say, in general, it hasn't. As a point of fact, as I mentioned earlier, I'm going to Baltimore later this week to deal with the issue of credit reports as a general topic, and how we, the NAIC, are going to address the question.

Q Are you finding insurance companies are using credit reports?

A I didn't say that. The question is the use of credit reports, and we're going to look at the question.

Q Are you going to bring this case up now that you know about it?

A Based upon what I know, I wouldn't have very much to talk about, would I?

Q Besides the class action case that I mentioned to you earlier involving over 2 million people in California, the Cents case, have you ever heard of the Donaldson versus State Farm Mutual Auto case in California, alleged class of six to 10,000, where it's claimed there's been a denial of benefits based on reports from physicians who have neither reviewed the [87] records nor examined the people? Have you ever heard of that?

A No, sir.

Q That's not only a request for class action, but RICO, as well. By the way, what is RICO? Do you have an understanding of that?

A It has something to do with racketeering.

Q Is it a federal statute?

A I believe it is.

Q Were you aware Arkansas has a class action estimated at between fifty and 100,000 which is not yet certified, but has been filed, claiming misuses by State Farm in the area of after-market parts?

A Let me say generally I'm never made aware of actions that are filed.

Q There's a case in Arizona, Miller versus State Farm Mutual Insurance, which is in its early stages, alleging improper use of a medical peer review scheme. Have you ever heard of that?

A No, sir.

Q There's a second class action in Arizona entitled Martin versus State Farm, it has to do with State Farm's practices on allowing people that have bought different kinds of coverages to take advantage of all the levels of coverage. You never heard of that?

[88] A I never heard of that specific --

Q Have you heard of the term "stacking of insurance policies"?

A I have.

Q That's what that case involves. You haven't heard of that?

A The case, or stacking?

Q The case.

A No, sir, I have not.

Q Have you heard of any cases in Arizona against State Farm?

A No, sir.

Q Isn't it true you've been listed as a witness for State Farm in the, in an Arizona case entitled Mark T. Shrader versus State Farm Mutual Automobile Company?

A I'm not aware of it.

Q I've got a copy of State Farm's witness designation. "Number 11, Richard Rogers. Richard Rogers is an insurance regulator who will testify regarding his experience in regulating State Farm." Does that sound like you?

A It sure does.

Q You don't know about that?

A I have no recollection of that, sir.

Q Do you see Mr. Yancey is listed right under [89] your name as number 12?

A I do. May I ask the date of that?

Q Sure. It looks like it's July 1st.

A Of what?

Q Of this year.

A I have no recollection of being asked to testify on anything in Arizona, sir.

Q Let me move on. Here's a class action entitled -- Before we move on, let me see if this refreshes your recollection. Witness 18 listed is Paul Belnap. Haven't you discussed with Mr. Belnap that you and he are both designated as witnesses on behalf of State Farm in this Arizona case?

A I don't recall knowing Mr. Belnap, sir.

Q You don't know who he is?

A I don't.

Q If you saw him would you recognize him?

A Pardon?

Q If you saw him would you recognize him?

A I have no idea. I may.

Q He's kind of hard to miss.

A Is he?

Q Getting back to class actions, I see one called S-A-L-S-E-I-N, versus State Farm Fire and Casualty Company. Estimated class of tens of thousands. [90] It raises State Farm's practices of withholding 20 percent of replacement costs any time a homeowner does not engage a general contractor. Have you ever heard of that one?

A No, sir.

Q One in Alabama, a class action involving something over potentially 100,000 people, again regarding State Farm's use of after-market parts? You haven't heard of that one?

A Again, just because a class is filed, that doesn't mean I would hear about it, no, sir.

Q Tennessee has one on State Farm's use of after-market parts, Dean versus State Farm Mutual. I assume you haven't heard of that one. There's one, a recent one filed in the state of Washington entitled Tina VanNoy, and lists others, versus State Farm Mutual Insurance Company and State Farm Fire and Casualty Company. I have here in front of me the complaint. I'm sorry, it's not the complaint. It's plaintiff's motion to compel production of documents.

And the statement of fact starts out, "This is a certified class action that challenges State Farm Mutual Automobile Company and State Farm Fire and Casualty Company's retroactive denial of medical expenses incurred by class members who are insured by [91] defendants." You haven't heard about that in any of your meetings?

A No, sir. With all due respect, sir, I probably wouldn't have heard about this one if I wasn't testifying.

Q Okay. Now, again, your testimony has been, if State Farm was mistreating people on any sort of a substantial basis, you'd know about it.

A Yes.

Q I don't want to waste a lot of your time or the court's or the jury's, I've gotten these two books, approximately 100 judicial findings in different cases around the country of misconduct by State Farm. We'd be wasting our time for me to go through and ask you about these, wouldn't we?

A If they're similar to the last cases, I presume that's correct.

Q Well, the last ones were class actions, and some also involved RICO counts. These are not class actions. These are individual cases around the country, many where State Farm's been sued for bad faith, and similar things. Would we be wasting our time to go through all these?

A Generally speaking, unless there is a case that involves a point in law in Illinois, you would [92] probably be wasting your time.

Q I'll represent to you those cases are just from a limited time frame of '87 to '95, they were in some research that Mr. Prater had obtained through another case.

And again, you're not aware of any punitive damage verdicts against State Farm, anywhere.

A Punitive damage? No, sir.

Q Those don't get discussed at your meetings, I guess?

A I'm not aware of any punitive damage awards against State Farm, sir.

Q And again, your testimony is that you don't know of a single instance where State Farm has been unfair to anybody.

A I have no direct knowledge.

Q It looks like you may have overlooked a few million, doesn't it?

A Let me put it in context, sir. There are about 1,600 companies in the state of Illinois. State Farm writes over a billion dollars in premium. Is there a possibility that State Farm mishandled a file? Yes, sir. Are their general practices? I think it's a quantum leap.

Q We just looked at class actions where State [93] Farm has agreed to pay millions of people, haven't we?

A Sir, I just settled, it was a part of a Prudential settlement, where basically they settled for a $35 million fine and about a $120 million remediation premise, in all honesty, of not going to a class action lawsuit. There's not necessarily an admission that they did anything wrong. In fact, the settlement basically says, "We do not admit to guilt." I think it's a quantum leap to make a judgment that a settlement signifies guilt.

Q So you don't think Prudential did anything wrong.

A I didn't say that.

Q You think they did, don't you?

A I didn't say that.

Q And the Prudential case is somewhat unusual. That tied your office up for months, didn't it?

A My office, sir?

Q Yes.

A It took up a lot of my time, yes, sir.

Q It's hard to do that very often, isn't it?

A It's hard to do that very often.

Q And the Prudential settlement did not involve claims handling practices, did it?

A It may well have, sir.

[94] Q I thought the allegations in that case were for the way they marketed their products.

A If, however, there was a death claim during the period, they would have to go back and review that in the context of the settlement. So in that limited ring, it could have involved claims, yes.

Q That was life insurance?

A Yes, it was.

Q Let's move on to another subject. I'm going to put up some pages from your deposition, if we could. Excuse me, Glenn, I'm on page 29. On page 5, we just discussed the fact that when you worked in the insurance industry you were an underwriter. And that's true, isn't it?

A Yes, it was.

Q You didn't work in claims?

A No, I did not.

Q So rather than repeat that, we can simply agree that your experience in the insurance business was an underwriter.

A We can agree that when I was in the insurance industry, as opposed to a regulator, my experience was as an underwriter, yes, sir.

Q Right. And then going to the bottom of the page, you're asked the question, "As an underwriter, you [95] wouldn't be involved in claims, would you?"

And your answer was, "No, sir."

And in the interest of time, let's just read this. You were asked the question, "Have you received -- "

MR. HANNI: You're on 29?

MR. CHRISTENSEN: I'm now on 30. I just turned the page.

Q (BY MR. CHRISTENSEN) "Have you received any formal training in claims handling?"

"No, sir."

And that's still true, isn't it?

A As to formal training? Define formal training. I mean as a part of CPCU? As a part of CIE? As a part of general experience? Yes, I've received training.

Q Well, I asked you this question just a few weeks ago and you said no. Are you changing your answer?

A Which specific --

Q "Have you received any formal training in claims handling?"

A Depending upon what your definition is of what formal training is, I may have well.

Q Have you been formally trained to handle [96] claims?

A Depending on your definition of "formal."

Q I don't want to quibble with words. Let's move on. "Have you ever reviewed any of State Farm's claims manuals?"

Your answer was, "I don't recall."

"Have you seen any?"

Your answer was, "I don't recall."

Question. "If I were to ask you questions about what are State Farm's claims practices and policies, I assume you wouldn't be able to tell me something like that, would you?"

Answer. "I don't recall. I don't know whether or not I would be able to."

Question. "Have you ever heard of State Farm's PP&R program?"

Answer. "I don't know."

Question. "And nothing that you recall right now, apparently?"

Answer. "No."

I'm now moving to the next page, page 31. And I'm going to the part that I've underlined, beginning on line 14. "There are how many -- "

MR. HANNI: Your Honor, I'm going to object to some use of the deposition, because this is an [97] improper way of doing it. This witness is not a party to the lawsuit, and if it's going to be done quickly, I won't object. But if it's going to go on and on I do, because it's improper use.

MR. CHRISTENSEN: If you want I'll ask him if he gave the answers that are up here.

THE COURT: Proceed.

Q (BY MR. CHRISTENSEN) You were asked in your deposition, "There are how many insurance companies that do business in Illinois?"

And what was your answer?

A "Probably 1600."

Q And you were asked the question, "And are your market conduct examiners supposed to periodically look at those companies?"

MR. HANNI: What page are you on?

MR. CHRISTENSEN: Thirty-one.

Q (BY MR. CHRISTENSEN) And did you answer, "In theory, yes, sir."

A Yes, sir, I did.

Q That is more theoretical than real, isn't it?

A Yes, sir, it is.

Q "Are you like other governmental agencies?" You were asked this question -- I'm sorry, I missed part of that, didn't I? "Are you like other [98] governmental agencies, you're understaffed?"

And your answer was, "Yes, sir"?

A I'm laughing at the -- I'm not sure what the --

Q Whatever that four-word preface is, your answer was yes.

A That's right.

Q Is that right? Okay. And moving down to --

A I also said the following, "Realistically it would be nice -- " Or I guess that's your question. And my answer to that was no.

Q Okay. Let me skip down here to line 12. Were you asked the question in your deposition, "How many market conduct examiners do you have to do market conduct exams on homeowners and auto insurers?"

And is that number ten?

A Yes, it is.

Q "And those ten have to cover the areas of underwriting, advertising, marketing, rates practices, as well as claims practices?"

A "Yes, sir."

Q "And -- " I'm going to try to move this along.

A But allow me to put that into qualifying. One of the reasons we moved from routine exams to target [99] exams is that now, as we identify problems, we simply go in and look at the problem area and don't look at the whole scope. So that they wouldn't necessarily look at, in all exams, all the areas.

Q But these ten people are expected, under their job, to be able to spot improper practices in all these areas.

A Yes, sir.

Q And they're expected to be able to spot them, not only in home and auto insurance, but health insurance, life insurance, and every other kind of insurance that's sold in Illinois, aren't they?

A Actually, I have about ten that do property and automobile, and maybe another ten that do life, accident, and health.

Q And Mr. Rogers, when you came out of the insurance industry as an underwriter, you worked for two months as a market conduct examiner.

A That's correct.

Q With no claims handling experience.

A That's correct.

Q No claims handling training.

A That's correct.

Q And yet you did market conduct studies on claims handling, didn't you?

[100] A You need to understand that when we look at a claims file, we're looking basically at trends. We're not trying to make judgmental factors as to settlement. We look at such

things as, "When was a claim open? When did you respond to the correspondence? How long was a claim file open? What was the amount demanded? What was the amount settled on?"

So those things I'm not sure you need to be an expert on. They're very objective things you're looking at.

Q So you weren't looking to see if the amount paid was the right amount.

A Oh, I disagree. I think we look at the amount originally requested and the amount settled on. And I think -- I don't know what the right amount means in context. Our regulations say basically, insofar as automobile insurance, specifically says, that it really doesn't matter what you settle on. You have to be able to name, in the case of a partial loss, a repair shop that will replace the car for that dollar amount, and if the consumer wants, you demand that the consumer go to that shop, you must warrant the work. We think ultimately the replacing of like kind and quality, the doing satisfactory work, and the warrantying the work is what's important. It's not how you arrive at a dollar [101] amount.

Q Okay. Do you claim that when you spent those two months as a market conduct examiner, that you had the background to know whether so many thousand dollars paid, for example, for disfigurement of a person's face, was fair?

A With all due respect, I don't look at bodily injury claims.

Q You don't --

A I've never alleged that I look at bodily injury claims.

Q You don't look at bodily injury claims?

A Simply because the judgment would be too subjective.

Q And your department doesn't look at bodily injury claims.

A No, sir.

Q So you stay totally out of the personal injury area.

A Yes, sir.

Q You just look at totalled cars and bent fenders, that sort of thing, broken windshields.

A Generally speaking we stay out of liability questions and questions of fact.

Q You stay out of questions of whose fault it [102] was and whether --

A Yes, sir.

Q If those questions come up, you go tell somebody to get a lawyer, don't you?

A I would not do that. I would suggest that if it gets to the point of where they're in a dispute in that nature, that they should contact a lawyer, yes, sir. I will never try and be a court of law.

Q You don't try to resolve those kinds of issues for people?

A I would never try and be a court of law, no, sir.

Q Now, in your deposition, I think you indicated there are about 300 auto insurers in Illinois?

A I believe that's correct, yes.

Q At that deposition we got a copy of your 1994 statement. Was that the most current one at the time? Is that why this is the one you gave us?

A I believe it probably is. I believe our 1995 will come out this year.

Q But it's not out yet?

A If it's not out, it will be out in a short period of time. And the reason why is basically the 1995 data year ending doesn't become available until April or May.

[103] Q Okay. Now, this book that I'm holding in my hand lists all of the property and casualty insurance companies in Illinois, doesn't it?

A I really don't know.

Q Okay.

A I mean I would presume that the answer to the question is correct, but I couldn't say without qualification that's a true statement.

Q Auto insurance companies fit into this category, don't they?

A Yes, they would.

Q Now, I've put up one page just for illustration. I quickly counted this one page, and I don't know if I counted right, but I think I'm close, I counted fifty-nine on that page. If I were to represent to you that there are fifteen pages of property and casualty insurance companies listed, would you agree with that, or do you want to look at your book?

A I would have no reason to disagree with that.

Q Now, there are a few pages that have some gaps in them as you change subjects.

A Uh-huh.

Q So not all would have quite this many on it.

A Uh-huh.

Q But if we just assumed that there was fifty [104] of these companies listed on a page, and there are fifteen pages, that would be 750 companies, wouldn't it?

A I believe that's correct.

Q And that's just property and casualty.

A That's correct.

Q Then you have health insurance and life and other things, right?

A That's correct.

Q And those total up to about 1,600?

A I would say that's approximately right, yes. Let me add that doesn't necessarily mean they're writing everything.

Q I understand. A frequent complaint at the NAIC meetings that you hear from people around the country is that they're understaffed; isn't that true?

A That would be a correct statement.

Q And you're understaffed. We already established that, did we not?

A I don't know if we have or not.

Q But that's true, isn't it?

A I believe you could always use more people.

Q Didn't you say in your deposition you were understaffed?

A I don't recall.

Q Let me refer you to page 31, right at the [105] bottom. "Are you like other governmental agencies, you're understaffed?" Remember your answer to that? It was the one with all the Hs on it before the answer.

A Uh-huh.

Q And your answer was, "Yes, sir," right?

A That's correct. I also went on to say, in response to the next question, "I think, as a person trying to build an empire it would be great, but as a pragmatic regulator it wouldn't be necessary."

Q Yeah, but that was in response to my asking you if it would be a good idea to do a market conduct study on each company each year, right?

A So, I think my point is that, sure, could I use a few more people? And the answer would be yes. Am I understaffed to the point where I don't think I can facilitate doing my job? The answer would be no.

Q You haven't made time to do a market conduct study on State Farm for over twenty years, have you?

A I haven't done a market study on State Farm. Does that mean I haven't found the time, or I haven't saw the need? I think those are two different standards.

Q The truth is, you really don't know what State Farm is doing, do you?

A The truth is, I think I do.

[106] Q Let me refer you to page 40 of your deposition, were you were asked the question in your deposition, "Is it your testimony that State Farm has never violated the Unfair Claims Settlement Practices Act in the entire history of the state of Illinois?"

And your answer was, "No, sir, it's not. That's not my testimony."

Then I asked you the question, "They probably do it every day in some form, don't they?"

And what was your answer?

A "I have no idea."

Q And that was a truthful answer, wasn't it?

A Again, let me put it in context. I think there's two different things you need to look at. If you look at, do they do an individual act --

MR. HANNI: Just a minute, let him finish his answer, I think, in fairness.

THE COURT: I think he can answer the question that was asked.

Q (BY MR. CHRISTENSEN) Was that your answer, sir?

A Yes, it was.

Q Thank you. I'm going to refer to page 21 of your deposition. We were talking about, I'll suggest to you, the financial part of the insurance department, [107] things they do to look at the financial -- Well, I'll read it. Beginning on line 12.

"Is the department concerned or involved at all with the financial condition of insurance companies?"

Your answer was, "Yes."

Question. "Can you explain what your involvement is in that, and what your interest is in that, or your responsibilities?"

And your answer was, "Mine is very limited, in that the original focus of regulations has always been financial solvency."

"Insurance is based upon a promise to perform, and if a company has no money they won't perform their promise. So the original, and probably primary focus of regulation is financial solvency."

Insurance departments, original and primary focus is to make sure that insurance companies are financially sound; isn't that true?

A Yes, it is.

Q And trying to monitor claims handling is secondary.

A The primary focus has always been financial. I don't think that necessarily relegates me to a minor role.

[108] Q All right, let me move to another area. Your testimony is you've seen no State Farm manuals, claims handling manuals.

A I believe my testimony was I don't recall.

Q You've never heard of their PP&R program?

A I believe my testimony was I don't recall.

Q And that's still your testimony?

A That's still my testimony.

Q You would agree, would you not, that giving people who handle claims incentives or awards, or encouraging them to pay less on claims would not be appropriate.

A It totally depends upon the context.

Q Well, let's assume that you have a claims department, and there's pressure or encouragement from management to try to enhance the company's profits by paying less on claims. That wouldn't be right, would it?

A If the company's general position was paying 120 percent, I presume that it would. The way you frame the question, I don't know what the answer is.

Q So you think it's okay to interject the concept of profit into a claims department.

A I think a claim should be handled correctly.

Q And you shouldn't, profit shouldn't even [109] enter the claims adjuster's head, should it?

A I think this is a free enterprise system, and generally speaking, every industry has a profit margin.

Q So is it appropriate to have profit as an ingredient in claims handling? Is that your testimony?

A I think, in the alternative, if profit's not a motive, they shouldn't be in business. Or more correctly stated, they won't be in business long.

Q So profit should be a motive when a man goes out on behalf of State Farm to decide what they owe somebody in a claim. He should be thinking, "I ought to be making the company some profit today"?

A I don't think that that's the way you look at it, no, sir.

Q Let me ask you --

A But to consider the alternative, that it's never a factor, is at best naive.

Q Isn't it true that an insurance company ought to make its profit from premiums and investment income, and not from claims?

A I think, generally speaking, when you look at a normal rate, there is usually about two and a half percent factorage built into the rate. That's based upon an underwriting profit.

Q Would you turn to page 63 of your deposition, [110] please?

A Sure. Yeah.

Q Let me bounce you back to the last part of 62, line 23. Are you there?

A Yes, sir.

Q I asked you the question, "Would it be fair to state, based on your knowledge and experience, that when someone has a claim, the insurance company's obligation is to pay what is fairly owing for that claim?"

Your answer was, "Yes, sir," right?

A That's what I said.

Q Then I asked you the question, "In other words, it would not be proper for an insurance company to pay less than was fairly owing to try to enhance its profits."

And your answer is, "That's correct."

A Yes, sir, it was.

Q Then I asked you, "Insurance companies should make their profits from their premiums and from their investments, not from trying to pay less than they owe on claims; is that a fair statement?"

And what was your answer?

A "I believe that's a fair statement." I still believe that's a fair statement. That's not what you [111] asked me before. You didn't ask me should they pay less than they owe. Obviously I think they should pay claims correctly. Does that mean that there shouldn't be an underwriting profit from claims, or from underwriting? Of course, it's built into the rates. It's assumed.

Q Sure, they should charge enough premium that they can pay people fairly and still make a profit.

A So you agree with my premise.

Q Let's explore that. It's the underwriting that needs to determine, "What do we need to charge so that we can pay fairly and still make a profit?" Right?

A That's correct.

Q If you get it backwards, if the underwriter sets the premiums low to get more business, and then the company tries to make it up by underpaying claims, that's totally wrong, isn't it?

A Absolutely.

Q Let me show you a document we've seen before, this is a memo from Mr. Haines at State Farm dated September 12, '94, regarding the PP&R program. And I'm not going to get into the PP&R specifics with you, because I know that's something you're not familiar with.

But let me ask you about this underlined statement. "It is inappropriate for either the claim [112] representative or claim management to include reduction of claim indemnity costs, pendings, or expenses as a goal, measure of job performance, or as a specific condition for promotion or merit pay increase."

First of all, do you know that that phrase, "reduction of claim indemnity cost," is another way of saying reducing average pay per claim?

A No, I don't.

Q That's not familiar to you?

A No, it isn't.

Q Would you agree that it's not appropriate to give claims people goals to reduce average pay per claim?

A I think it would depend upon what the context was.

Q Depends on the context? What about generally speaking? Sitting down with a person who's going to be out every day settling claims for State Farm and giving them a goal to reduce their average pay per claim. Do you see anything wrong with that?

A I see something with a goal saying that you should overpay claims. I don't think you should set a goal to underpay claims. I think claims should be paid correctly.

I think claims adjusters should be cost [113] effective, however. I think if there's a cheaper way of doing business, you should explore it. Does that mean average lower? I don't know. I'm not sure exactly what the bottom line to what you're implying means, but I think there can be a lot of meanings other than a simple, "You should underpay claims."

Q Do you agree with this statement, disagree with it, or do you even understand it?

A Reading it from here, I can't honestly say I understand it.

Q Would you agree in principle that claims handlers should not have average pay per claim goals? Do you agree, generally speaking, that's not appropriate?

A I should believe -- I believe there should never, ever be a goal to underpay claims.

Q I'm going to show you a document out of State Farm's PP&R manual, which I presume you've not seen.

MR. HANNI: Which manual?

MR. CHRISTENSEN: This is out of the '79.

Q (BY MR. CHRISTENSEN) Have you ever seen anything that looks like this at State Farm before?

A This was from '79?

Q Yes, this is from '79. I'll show it to you. Here's a photocopy of it.

[114] A I can assure you if I did, I don't recall.

Q This isn't the sort of thing you'd normally look at, is it?

A No, it isn't.

Q You would agree, would you not, that State Farm's booklet suggesting goals to claims people, like the one I'm pointing to right now, to hold BI paid cost to a certain number or less for the year, you'd agree that's very inappropriate, wouldn't you?

A Again, taken out of context, I would agree that it certainly appears to be inappropriate. And I have no idea, sitting here, what context it's in. That line in itself, in and of itself, appears to be inappropriate, yes.

Q But you and the people at the department in Illinois didn't know this was going on at State Farm, did you?

A Was I aware of this PP&R manual?

Q Or that --

A No, sir.

Q You weren't aware that these kinds of goals were going on at State Farm, were you?

A I have no idea if that's a State Farm goal. Again, you're taking a line out of context, and I have no idea how that translates to anything.

[115] Q Let me ask you about this one. A goal to list prior damage on a certain percent of all estimates written during the coming year. That would be totally inappropriate, wouldn't it?

A I'm not sure I understand what that means.

Q Well, let me suggest to you what I think it means. That's somebody sitting down at the beginning of a year and deciding in the coming year, "I'm going to find prior damage on a certain percentage of automobiles, and the accidents haven't even happened yet, and I haven't even seen the cars yet." That would be wrong, wouldn't it?

A Let me try and put it into a different context. And the answer to your question directly is yes, and if you want to cut me off you may.

But generally speaking, whenever you're dealing with a large number of claims that they're looking at, it's not unreasonable to expect that they're going to have general understanding of about how many cars and how many accidents are going to have prior damage, and to say, "We would expect that your people are going to be the same as the norm."

Therefore, if that is the context, then I'm not sure I have a problem with it. If it is as you've suggested, then I expect I would have a severe problem [116] with it.

Q Let me ask you about one more, and then we'll move on. How about settling a certain percentage of totals below book value, before you've even seen the cars? That's not an appropriate goal, is it?

A In Illinois our standard for total losses has nothing to do with the way it's calculated. I have no idea what NADA represents, whether it's good, bad, or indifferent. But certainly there are a lot of various methods you can use, whether it be computer databases --

Our goal simply says this. If you offer the consumer a dollar amount, the consumer must be able to go out and replace that vehicle for that dollar amount or you'll have to reopen the claim. So you have a choice, you can either replace the car, or you settle for a dollar amount that a consumer can go out and replace that for a dollar amount.

Q You're right, I am going to cut you off, because I don't think your answer is responsive.

A Okay.

Q My question is simply, do you see anything wrong with that as a suggested goal in a State Farm manual?

A In the context that I think that's in, I think that's inappropriate.

[117] Q It's wrong, isn't it? Illinois Department of Insurance never did anything about this, did they?

A I wrote the law.

Q You never disciplined State Farm, did you?

A I changed the law.

Q Did you discipline State Farm?

A I never saw that manual, sir.

Q Do you know if you asked State Farm to see that manual, they would tell you they don't have it?

A I don't know that, no, sir.

Q Offering claims people incentives to underpay claims is a direct violation of the Unfair Claims Practices Act, isn't it?

A I don't believe it is.

Q That's not in your act?

A I don't believe it is.

Q You're sure of that?

A Reasonably.

Q If I were to suggest to you it's in the Utah act, would that surprise you?

A No, sir.

Q Let me refer you to number C, here. "Compensation by an insurer of its employees, agents, or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of [118] claims."

That's not in your unfair claims practices regulations in Illinois?

A No, it isn't.

Q It's a good idea, isn't it?

A I don't know. I mean I think you need to put it into the proper context. I think the goal you're looking for is not the compensation. The goal you're looking at is adequate payment of claims.

If the consumer can take a vehicle out and get it replaced and is satisfied, and the company warrants the work, with all due respect, I'm not sure that the dollar amount is the relevant question.

Q What if they don't want to fix the car, they just want fair payment for it?

A Then I think the company has the obligation to say, "If you were going to fix the car, you could have gone to this shop." The company doesn't have any obligation to do anything more than pay what it would have paid to put the vehicle back into like kind and quality. You have an obligation to put the consumer back in the position where they were before the claim. That's all you have an obligation to pay.

Q Do you think it would be improper for an insurance company to put self-serving correspondence in [119] a claim file?

A I have no idea what that means.

Q In your deposition you said that Mr. Hanni had shown you the Excess Liability Handbook. Do you recall that?

A Only in general terms, I recall the conversation.

Q Pages 48 to 49?

A Yes.

Q So Mr. Hanni showed you the Excess Liability Handbook?

A Yes.

Q And you said nothing in it gave you any concern, didn't you? Look at page 49.

A Where, specifically, are you talking about?

Q Well, I'm not sure. I'll have to look it up.

A I don't read where I said anything like that.

Q All right, I asked you at the beginning on page 48 -- And we're talking about the Excess Liability Handbook, right?

A Yes, we are.

Q I said, "Did you see anything in there that gave you any concern?" And would you read your answer from line 2 of page 49?

A "No, sir."

[120] Q What you read in this doesn't bother you, huh?

A I don't recall what I read in that.

Q You said your department would never have found the Excess Liability Handbook, even back in the seventies, because you don't look at excess claims.

A That's correct.

Q That's still true?

A That's correct.

Q You don't if State Farm offers less initially than they offer later, when they settle claims?

A Are you speaking about what kind of claims?

Q Generally. You don't know if they have a practice of offering less initially than they ultimately offer?

A I can state, without qualification, that if a claim was settled for the amount originally demanded, there's a note that goes in the file that says, "The department of insurance is available, if you have any questions regarding the claims settlement practices." We do not, as a general business practice, get inquiries based upon that.

Q Let me refer you to page 51 of your deposition, if I could, please.

A You may.

[121] Q All right, beginning on line 9.

A Yes.

Q I said, "As far as you are aware, does State Farm typically -- "

MR. HANNI: Which page are you on?

MR. CHRISTENSEN: Fifty-one.

Q (BY MR. CHRISTENSEN) "As far as you're aware, does State Farm typically offer less money in its initial offer than it ultimately pays in the settlement?"

What was your answer?

A "I don't know."

Q Then I asked you, "Do they typically offer more money after someone hires a lawyer?"

And what was your answer?

A "I don't know."

Q The same question, "They typically offer more money after someone files a lawsuit?"

And your answer was?

A "I don't know." And in order to explain, let me say, once again, if a lawsuit's involved, the department isn't. The courts have their jurisdiction and I have mine.

Q You stay out of all those kinds of issues.

A I think it would be inappropriate if there's [122] a lawsuit pending that I stick my nose into it, yes, sir.

Q And you testified that you didn't know what duties the Illinois courts had said insurance companies owed the claimants.

A Pardon?

Q Wasn't it your deposition testimony that you don't know what duties the Illinois courts have determined the insurance companies owe the claimant?

A What page are you on?

Q Forty-five.

A Is that where you said, "If I were to ask you what the specific duties?" Is that the question?

Q Right at the top of page 45, I said, "Do you know -- " No, right at line 9, I said, "If I were to ask you what specific duties that have been outlined by the courts in Illinois that an insurance company owes first," that says "firth priority," but I think it's a typo, "first-party claimants, could you tell me?"

Your answer was, "No, sir." Is that true?

A I believe it's probably first party, and yes, sir, I said, "No, sir."

Q And I said, "If I asked you the same question with respect to third-party questions, could you tell me?"

[123] Your answer was, "What the courts have outlined, no, sir."

And I said, "What the courts have outlined, what the courts have said your duties are?"

And your answer was, "No, sir." Right?

A That's correct.

Q Now, I want to show you a page from the publication that the insurance department in Illinois puts out. I'll show you the copy of it. I think this is taken from the '95 copy. I'll just hold this up. Is this a publication your department puts out?

A Yes, it is.

Q About how often?

A I believe it's quarterly.

Q So four times a year?

A Yes, sir.

Q Okay. And I'll represent to you what I'm about to put on the screen is from the June, '95. So about a year ago. Do you see under the section, "Funding of the NAIC"?

A Yes, sir.

Q And that's this national association we've been talking about?

A Yes, it is.

Q This statement says, "As an -- " And by the [124] way, does your boss either write this, or at least approve it, the commissioner of insurance?

A Most assuredly he approved it.

Q Okay. "As an instrumentality of the states, the NAIC should carefully review its current funding. At least 70 percent of this funding comes from the regulated insurers, and only 3.2 percent comes from the states." Was that a true statement?

A I have no reason to question this document.

Q So basically the money for the NAIC comes from the insurance companies that you're supposed to be regulating, doesn't it?

A That's what this says, yes, sir.

Q It goes on and says, "In reviewing the funding mechanism we should consider," and I want to move down to the fourth item raised. "We should consider whether the NAIC should continue to obtain over 70 percent of its projected revenue from the industry we are regulating." That's a pretty good question, isn't it?

A Yes, it is.

Q It's kind of hard to regulate an industry that funds your activities, isn't it?

A I disagree.

Q And this is voluntary, isn't it?

[125] A I beg your pardon?

Q Well, the insurance companies don't have to pay the NAIC?

A That's arguable.

Q They have to pay if they want to belong, but it's not a tax, is it?

A Oh, it's questionable.

Q It's questionable whether NAIC has taxing power?

A Oh, no, sir. The NAIC has no taxing power. The database fees that make up about the vast majority of this 70 percent come from database fees that are paid for through the Illinois Department of Insurance, and the other departments of insurance. The NAIC is not collecting the money, the various states are.

Q Well, when you go to these meetings every three months, do you stay in nice hotels?

A Yes, we do.

Q Do you eat good meals?

A I eat well.

Q The insurance companies pick up the tab for that, don't they?

A No, sir, the NAIC picks up most of the tab.

Q And the NAIC gets most of their money from the insurance companies.

[126] A That's true.

Q Do you have any -- Let me move on. I think I've learned from one of the witnesses in this case that State Farm may have had a representative who chaired the market conduct committee at the NAIC. Would that make any sense?

A No.

Q Okay, I may be mistaken on that.

A It might well have been that they chaired an advisory committee to the task force.

Q To the market conduct committee?

A To a working group under the market conduct subcommittee. As an example, when I chaired the unfair claim practices, someone from the industry made up a chair of an advisory committee that would have been made up of industry and consumers. Whether or not that was State Farm at that point in time, I have no idea.

Q Okay. Let me move to another subject. Now, you said your department is consumer oriented. Do you remember saying that this morning?

A I would have hoped that I did, if I was asked the question.

Q Your job is to protect the consumers, isn't it?

A Yes, it is.

[127] Q Don't you have a conflict of interest, here?

A I beg your pardon?

Q Don't you have a conflict of interest to be here as a witness on behalf of an insurance company, when your current job as a public official is to be protecting insureds from misconduct by insurance companies?

A With all due respect, I'm here as a regulator. I'm not representing anybody.

Q And you're on the witness list for State Farm for Arizona, too, aren't you?

A I can be on a lot of witness lists, but as I testified, I'm not aware of why I'm on a witness list in Arizona. I don't recall ever having been asked the question, I don't recall having ever answered it. This is the first time I've done this. I don't do it as a practice. So no.

Q Doesn't it compromise your position to be here advocating State Farm's position today?

A I'm not advocating State Farm's position, I'm advocating my position as a state regulator. I have testified

that I know none of the specifics of this case, I don't care about any of the specifics of this case. I'm here to testify as to unfair claim practices.

Q All right, let me follow up on that with you [128] a little bit. It would be improper if you or your department were investigating this case -- Well, let me put it this way. If this case was pending in Illinois instead of Utah, it would be improper for you to be here testifying for State Farm, wouldn't it?

A Again, I'm not testifying on behalf of State Farm.

Q It would be --

A I have no idea whether or not it would be inappropriate. And I think it would depend upon why I'm asked to testify, and what I'm asked to testify to. In this case I'm asked to testify to what I know as to market practices.

Q Wouldn't you expect, sir, that if the jury in this case returns a finding of fraud against State Farm, that the Utah insurance department ought to look into that?

A I think that they should certainly be made aware of it, yes.

Q So it would be improper, would it not, for someone from the Utah insurance department, who's currently working, assigned to oversee State Farm, it would be improper for them to be here testifying with this case pending, wouldn't it?

A If -- With all due respect, sir, when I'm [129] here testifying to what I understand to be general market practices and regulatory practices in Illinois, and where State Farm fits into the scheme of what I look at, I'm sorry, I don't see a conflict at all.

Q You wouldn't see one for someone from Utah doing it, testifying while a case is still pending --

A I wouldn't see a conflict if you had called me as a witness, sir.

Q Now, you mentioned in your deposition that the, or discussions at the meetings at the NAIC -- And I'm going to refer you now to page 64 of your deposition. To simply, that's a lead-in to the next thing I want to ask you about.

I'm now moving to page 65 of your deposition. I asked you, "Can you give me names and details of the companies that were discussed at those meetings for unfair claims practices?"

Your answer was, "I can give you some names of companies that were discussed within the last two or three years, none of which involved unfair claims practices."

"What were the subjects?"

"One was unfair solicitation and unfair advertising. Another was churning in life insurance sales. Another one would have been Cornet Insurance [130] Company, and may have involved claim practices, but more related to solvency."

Is that a truthful statement when you made it?

A I believe it's still truthful.

Q Thank you. Now, your boss is the insurance commissioner of Illinois?

A Yes, that's correct.

Q And that's a political job, isn't it?

A Define political.

Q Well, he's appointed, he's a political appointment of the governor.

A He's an appointment of the governor, yes, sir.

Q And the governor can hire and fire him as he chooses.

A That's correct.

Q And it's, generally speaking, when you get a new governor, especially if the party has changed, you get a new insurance commissioner; isn't that true?

A We've had one party for about the last twenty-five years.

Q So that's a moot question in Illinois?

A I presume that's a correct statement.

Q So to get appointed insurance commissioner, [131] the governor has to like you.

A I've never applied for the job.

Q State Farm's the largest insurer in the world, isn't it? At least auto insurer?

A I don't know that firsthand, but I wouldn't quarrel with the observation.

Q At least it's the biggest in the country, isn't it?

A Same answer.

Q It's headquartered in Illinois?

A Yes, it is.

Q It's an important part of the Illinois economy, isn't it?

A Yes, it is.

Q I think we've seen charts indicating that State Farm has something like $54 billion in assets? Does that sound about right?

A Again, it sounds about right. I have no first-hand knowledge.

Q I don't have any information on what State Farm's spent for political lobbying in Illinois. We do have indication that State Farm spent more money for political lobbying in California in '94 than anyone else. Would you have any reason to quarrel with that?

A No, sir.

[132] Q State Farm wrote $1.3 billion in premium just in Illinois in '94, didn't they?

A I believe that's correct, yes.

Q That's a lot of money flowing through the Illinois economy, isn't it?

A Yes, it is.

Q And your department gets a premium tax on that $1.3 billion?

A To be quite honest, sir, I'm not sure what the rate is on domestics, whether or not there's an offset or not. I think there's a variance between domestics and foreigns.

Q Do you know about what that tax is?

A I have no idea. My particular unit is funded out of producer licensing fees, solely.

Q Out of licensing fees. And let me follow up --

A And charging brokers.

Q You said when you do market conduct and you find things and you charge insurance companies, that they have to pay some money.

A I didn't say anything about finding things. I said when we do market conduct examinations, we bill the insurance industry.

Q But when they pay that bill, it goes into the [133] state general fund.

A That's correct.

Q Not into your budget.

A That's correct.

Q And so you have to spend your budget on market conduct, but to the extent there's a return, you don't get that money.

A That's correct. However, once they see that it's a zero wash, it becomes arguable that there's no reason, when we generate more money than we spend on market conduct, there's no reason to not allocate funds to market conduct.

Q I want to spend a minute with you on these claims ratios. And we'll use the '94 book since that's the one that I have.

A Okay.

Q How many companies, auto companies -- Are they listed as auto, or is it property and casualty?

A I'm not sure what you're referring to.

Q The claims ratios that you and Mr. Hanni talked about.

A I'm still not sure.

Q You've listed a certain number of companies on their claims ratios.

A You're talking about complaint ratios.

[134] Q I'm sorry, complaint ratios.

A I'm not even familiar if the complaint ratios are in that book.

Q Aren't they in here?

A To be honest, I don't think they are.

Q Well, let me see if we can handle this generally. If we need to get to the specific numbers, we'll check it out.

A Okay.

Q I think you may be right. I think those were an exhibit to your deposition, weren't they?

A I believe that's correct.

Q In your deposition you estimated 300 auto companies, from the book it looks like it could be double that.

A I would say that the book is right insofar as who was authorized. I'm not sure -- I would say I'm probably closer to right as far as who's actually writing.

Q Let's say it's 600 companies.

A Whatever.

Q And how many do we have complaint ratio data on?

A I believe in 1994 it was forty-five.

Q Forty-five? That would be, if our estimate [135] is right, and it may below --

A Or it may be high.

Q That's over 500 companies that aren't on there, isn't it?

A Your estimate is correct, that's correct. If your math is good.

Q It's not always good. So the forty-five that are listed are the forty-five companies with the most complaints against them?

A No, the forty-five companies with ten or more complaints, and I presume, therefore, that's right. You've got to keep in mind they're also the forty-five that write approximately the largest percentage of the business.

Q But they are the forty-five companies with the most complaints filed against them, right?

A They're the forty-five that have ten or more complaints, yes, sir.

Q And so when Mr. Hanni said, for example, one of them was ranked third or fourth or second, whatever it was, let's say it was second, it may well have been ranked number 557, not second; isn't that true?

A I have no way of knowing that.

Q Yeah, we don't know, do we?

A No, we don't.

[136] Q So it's a little misleading to say State Farm is second, when there's over 500 companies who had so few complaints they weren't even listed.

A I totally agree with you.

Q Okay.

A I have the same problem with that myself.

Q All right. Now, I'm going to show you, and this is from the cover sheet of the complaint ratio data -- This was Exhibit 1 to your deposition, I see a sticker down here. I want to read the underlined portion with you. "The '94 consumer complaint ratio -- "

MR. HANNI: What date is that?

MR. CHRISTENSEN: It's dated July 24th, 1995.

Q (BY MR. CHRISTENSEN) Does July 24th mean anything in Illinois? It's a holiday here. But the commissioner of insurance warned consumers to view the complaint ratios cautiously. Do you see that?

A Yes.

Q He goes on to say, "These numbers are only one gauge of an insurer's performance, and should be viewed in proper perspective." You agree with that, don't you?

A Yes, I do.

Q And part of the perspective is what we just talked about, isn't it?

[137] A Yes.

Q "'Many factors can influence complaint activity, including urban versus rural environments, how many policy holders a company insures, and overall market conditions in a given year. Furthermore, the complaint ratios may be just as useful for what they don't show,' he said."

Let me move down to the other part I've underlined. "'Complaint ratios were never intended as a marketing tool for insurance companies or producers,' Buzell said." And Buzell's your boss?

A Yes, he is.

Q "'Unfortunately, they are sometimes used that way.'" Do you agree with that statement?

A Yes, I do.

Q They were never intended to bring into courtrooms to show juries, to try to sell to the jury that there weren't problems, are they?

A God, I hope not.

Q Okay, let me see if I can move along, here. Now, we've talked about State Farm's size, and the fact it's headquartered in Illinois, and is an important part of the Illinois economy. Don't you think State Farm has just a little political muscle in Illinois?

A I would suspect that they probably do.

[138] Q They probably do?

A Probably do. I don't know that for a fact. I would suspect that. I would be shocked if they didn't.

Q I would, too. Now, your complaint files, for example, the number of complaints in, was it -- You gave one complaint number today, I think it was the eighties, the complaints was around 500 for that year?

A State Farm?

Q Yes.

A I believe the '94 number was 500-something.

Q Okay. But that number of whatever it was, so many hundred complaints.

A Yes.

Q The public doesn't get to go look at those complaint files, do they?

A Complaint files are confidential.

Q And is that something the industry has asked for?

A No, sir.

Q But a member of the public can't go see what's in those complaint files, can they?

A No, sir.

Q All you report is sheer numbers.

A That's correct.

[139] Q You don't report what's behind it.

A That's correct. I can give you a breakdown as to the nature of the complaints, whether it would be underwriting, claims, et cetera. But basically I would never, if you were to file a complaint I would never reveal your name as a complainant, no, sir.

Q But if I wanted to go see what complaints had been filed against a particular insurance company, I couldn't do that, either, could I?

A Only as to aggregate numbers.

Q Okay. And you're not allowed to talk about specific cases, are you?

A I couldn't if I were allowed to.

Q You wouldn't know.

A I wouldn't know.

Q Now, this report that you mentioned, it was called a market conduct annual statement?

A Yes, sir.

Q That's confidential, too, isn't it?

A Actually I don't know that we've ever made a determination on that. I mean it's not generally made available to the public, because there are too many caveats that would have to be put on it. But generally speaking, no, it wouldn't be confidential.

Q Are you aware that Mr. Prater, who's been a [140] witness in this case, talked to one of your assistants about that report?

A No, I'm not.

Q I've forgotten his name. You don't happen to know who it is?

A I have no idea who Mr. Prater is.

Q Do you recognize the name of Michael Hessler?

A Yes, I do.

Q Who is he?

A He's my assistant directly in charge of market conduct.

Q If I were to represent to you that he told Mr. Prater that this market conduct annual statement was confidential and not available to the public, would you say that Mr. Hessler is mistaken?

A I would need to talk to Mr. Hessler about it, but I'm not aware that it's been made confidential.

Q You give it to the public?

A I've never had it requested, sir.

Q You've never taken the position, even with a subpoena, you don't produce it?

A I've never had it requested, sir, rather than here, and I made it available to you.

Q You made it to available to State Farm, who then gave me a copy, right?

[141] A I made it available to Mr. Hanni, who made it available to you.

Q Mr. Hessler hasn't told you he expressed concern to Mr. Prater that you'd given State Farm a document that the department has been saying shouldn't be given out?

A No, sir.

Q You didn't give the whole document to Mr. Hanni, did you?

A I thought I did.

Q You only gave one of five parts, didn't you?

A I found out yesterday when I was looking at it, that that's what happened. If that's what happened, it was a mistake, it wasn't intentional.

Q One part out of five doesn't mean much, does it?

A Again, the most I can do is apologize for an inadvertent error.

Q Now, Mr. Prater requested from Mr. Hessler a computer printout of the actions that State Farm, or that your department has taken against insurance companies since you started a computer database, which I think is around, what, 1980-something?

A I believe so.

Q This doesn't show a single fine for State [142] Farm, does it?

A I haven't seen that report.

Q Does that surprise you?

A No, sir.

Q And these reports that you say you do instead of market conduct studies, this annual statement, that's information that's given to you by the insurance companies, isn't it?

A Yes, it is. It's certified as to its accuracy.

Q So they tell you it's accurate.

A That's right.

Q But you don't have a mechanism to really go out and check all their books and records and know if it is.

A Oh, sure, I have market conduct.

Q That you haven't done on State Farm since the seventies.

A That doesn't mean I couldn't.

Q But you haven't.

A But I haven't.

Q Now, you get a lot of phone calls that don't turn into written complaints, don't you?

A Absolutely.

Q Didn't you say you get about 40,000 phone [143] calls a year?

A I said I get about 40 telephone inquiries a year, yes, sir.

I think I said I receive about 40,000 telephonic inquiries a year.

Q Now, in fairness, Mr. Rogers, you would admit, would you not, that this jury has seen a whole lot of State Farm documents, and a whole lot of evidence about State Farm that you've never seen.

A In fairness, I have no idea what this jury has seen.

Q You have not seen many, if any, internal State Farm documents, have you?

A In all honesty, I've tried to stay completely away from what's going on here. I'm here to testify to the market conduct. And what I do in Illinois, and what's going on here, I didn't want to affect one way or another.

MR. CHRISTENSEN: I think that's all I have.

* * *

[144] **REDIRECT EXAMINATION BY MR. BELNAP:**

* * *

[148] * * *

Q (BY MR. BELNAP) In a class action case, Mr. Rogers, can you tell us your understanding as to how people are asked to join that litigation, whether it's through advertisement, letters, or some other means?

A Prior to the last two or three years, I had very limited knowledge, if any, as to how classes were formed. Now I've gone up the way, all the way up to very limited knowledge. So generally speaking I don't know.

Q All right. What is your limited knowledge? Or let me rephrase that. In one of the cases that Mr. Christensen asked you if you were aware of, it is stated that -- this is a case that was from Louisiana, the Guichard case -- the court in that case indicated that future contact between people that the plaintiff's attorney was trying to get to join the class, and those that were in the case already, would have to be in compliance, on page 2 of the decision, with the following rule in Louisiana. "That a lawyer shall not initiate targeted solicitation in the form of a written or recorded communication of a person or persons known to need legal services."

Now, are you aware in this case that the [149] plaintiff's attorney had made advertisements throughout the state of Louisiana in newspapers asking people to sign up in the case?

A I'm not aware of that case.

Q All right. In the cases that Mr. Christensen asked you about, are you aware that the majority of these cases are simply complaints that have been filed against State Farm by people?

A I'm not aware of the cases, as I testified, nor would I generally be made aware if a complaint is filed.

* * *

Q (BY MR. BELNAP) Mr. Rogers, would you have any way of knowing, given your knowledge, one way or the [150] other, whether or not these are simply complaints that Mr. Christensen asked you about, as opposed to judicial findings of misconduct?

A No, I would not.

Q And with respect to these cases, are you aware whether or not allegations brought against State Farm with respect to RICO claims have been dismissed in some of these cases?

A I have no knowledge of these cases.

* * *

[151] * * *

Q All right. Neither do I. Sorry.

Would you have a problem, if I could just represent to you, that there's been testimony from State Farm witnesses that in 1994, the PP&R program was changed, as Mr. Christensen showed the memo to you, but prior to that time, if I were to represent the testimony has been that if there were goals in the PP&R about controlling indemnity expense, that it was the intent for State Farm personnel in management to combine that with good claims practices, such as early contacts, good investigation, appropriate obtaining of records --

MR. CHRISTENSEN: Objection.

THE COURT: Finish the question.

MR. CHRISTENSEN: The whole question is a [152] speech. I object to that, there's no foundation this witness is going to be able to say anything other than he doesn't know.

THE COURT: Finish your question.

Q (BY MR. BELNAP) Appropriate obtaining of records. If those activities were combined with a goal concerning the controlling of indemnity costs, would you think that was an inappropriate goal?

THE COURT: Sustained.

THE WITNESS: I do recall --

THE COURT: You don't have to answer the question.

THE WITNESS: I understand, going to a previous question, if I may.

THE COURT: Let him ask the question. You answer the question before you.

Q (BY MR. BELNAP) Do you have an opinion one way or the other, Mr. Rogers, whether it would be an inappropriate goal to control indemnity costs if it was combined with good claims practices activities?

A I suspect that, in the alternative, if they didn't do something to control indemnity costs, they wouldn't be in business.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF PAUL SHORT, JUNE 27 & 28, 1996

[Vol. 15, R. 10270, commencing at p. 22]

* * *

PAUL L. SHORT called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Would you state your name, please, Mr. Short.

A Paul L. Short.

Q And are you currently a State Farm employee?

A Yes, I'm a BI claim superintendent.

Q Are you up in the Ogden area?

A Yes, I work in the Ogden, Utah office.

MR. CHRISTENSEN: Your Honor, may I lead this witness?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) Have you been a claim superintendent for about eight years?

A Yes, I have been for about eight years, I've been in Ogden.

Q And before that you were with the fire [23] company as a claim representative for five years, approximately?

A Actually, I've been in the auto company for ten years, and prior to that I was with the fire company for five years.

Q I see. So it's a total of fifteen with State Farm?

A Yes.

Q And there was a period of about six months when you worked as an agent?

A Yes, I spent just a brief time as an agent.

Q And that would have been approximately when?

A That was probably about eleven to twelve years ago.

Q Now, you were over the Campbell file for a period from, beginning around '88 or '89 up until maybe a year and a half ago?

A Yes, I was the superintendent in the Ogden office. When I took those responsibilities the Campbell file was under my care.

Q And by that time the Campbell case was on appeal. You were not over it back at the time of the Logan trial.

A I was not. We were waiting for the decision from the Supreme Court at that time.

[24] Q Now, you were -- You sat through the trial last October?

A I did. I was the company representative for the first part.

Q So for the trial last year, you played the same role Mr. Kingman is playing in this trial?

A Yes, I was the company representative.

Q As I recall, you were there every day and sat here at counsel table and pretty well watched the trial.

A Yes, I was there, and watched and listened.

Q You attended many of the hearings that led up to that trial, too, did you not?

A Yes, I've been at several of the hearings.

Q And you've attended some of the hearings in between the trial last year and this trial.

A Yes.

Q Now, given your fifteen years of background in claims, I presume you know that an insurance company is obligated to treat people fairly and in good faith.

A Yes, I know that.

Q And that responsibility doesn't end when the insured has a claim against the insurance company, does it?

A That is a responsibility that we practice at all times. I've always been trained and taught to do [25] those things.

Q And that would include treating an insured fairly and in good faith, even if they file a lawsuit against the company, wouldn't it?

A We always treat our insureds in good faith.

Q Now, one of the things that you have done as part of your role in this case over a several-year period, is you've answered certain discovery requests on the part of State Farm; isn't that true?

A Yes, I have signed and answered some of the discovery requests that have been filed.

* * *

[26] * * *

Q I'm going to show you some answers to interrogatories that were filed earlier in this case. For example, the first one asks for the name of the insurance agent on the Campbell policy and the answer was Mr. George Jeppson.

And then the second page, is that your name on those?

A That is my signature.

Q Okay, and let me show you the third page. This is -- And typically they're notarized, so that you're signing under oath.

A I believe so, yes.

Q Okay. And you understood as you signed these that you were signing under oath, didn't you?

A Absolutely, just as I am here today under oath.

Q Okay. All right. Now, this case was filed [27] in 1989, the present case. And shortly after it was filed, about the time the complaint was served, we requested on behalf of the Campbells that State Farm produce a number of materials, such as claims manuals, claim school materials, that sort of thing; isn't that true?

A There were some initial discovery requests that requested manuals and those types of things that I went out and gathered and provided.

* * *

[30] * * *

Q I think I've got that page right here. I'm having trouble finding the exact one. Let's see if you remember, and if you don't, we'll take the time to find it.

In this set of discovery requests that were filed in 1989, we requested on behalf of the Campbells that things like claims manuals, claims booklets, looseleafs, audio and video tapes, directives, letters, that sort of thing, be produced as related to claims handling by State Farm. Is that true?

A Without looking at the specific one, I don't know of what time. But I believe that all those kinds [31] of things were requested at one time or another.

Q Okay. Let me show you the one that was requested. See where it says "Request for Production of Documents"? And this is the request that we sent to State Farm, and the answers we've been putting on the screen were State Farm's responses.

MR. BELNAP: Counsel, this, we're now moving to a different document, because the first set of requests in '89 --

Can I have just a moment so we know we're on the same document?

Q (BY MR. CHRISTENSEN) Okay, I think we've got this straightened out. The first request for production of documents that Campbell sent State Farm read, "Produce a complete copy of defendant's claims procedures manuals, including amendments and deletions, that would apply during the period of '81 to the present time. Claims procedures manuals shall include any written, recorded, video taped films, computer data or otherwise reproduced guidelines, procedures, instructions, or other items containing information relating to the handling, adjusting and settling of third party claims, including but not limited to manuals, booklets, looseleafs, memoranda, audio/video tapes, motion pictures and such other items, regardless [32] of whether or not they are bound together."

Does that sound like an accurate reading of that first set of discovery requests that we sent, at least the part I've read?

A Yes, that's what it said.

Q And those were submitted in 1989.

A Yes.

Q I think those were dated in August, and I think we established your responses were in October.

A I agree with that.

Q Okay. Now, in response to this, you only produced the manuals that were currently in effect in 1989, didn't you?

A When we responded to that, I worked with divisional claims superintendent that's locally here, with our general claims consultant from corporate, and with counsel to provide everything that we had.

Q Mr. Short, please listen to my question. You only supplied the manuals that were current in 1989; isn't that true?

A We worked to supply everything we had. We supplied everything that we could gather at that time to answer that. I'm not exactly sure what's all there, but there was numerous manuals.

Q You didn't produce anything from 1981, did [33] you?

A I believe in the manuals -- The manuals are updated by section, by part, whatever. I'm sure they included some things that were written in previous years, probably including '81.

Q You only produced the current manuals you had in 1989, didn't you?

A We produced everything that I could gather through working with the local people, with the people at corporate, and all those things that were identified in that request. We tried very hard to meet that. You know, there's numerous production requests.

Q I'll go over that with you. Didn't you testify a few months ago, in this courtroom, that in response to that request, even though it was made to State Farm, the whole company, all you did was look in your office in Ogden?

A I don't believe I said that. I believe I testified that I worked with counsel and with others to gather everything we could. The scope of the requests were so broad that there's no way that me, as an individual, locally, here, would be able to gather all that. So I had to use the resources of the local people, the region people, and the corporate people to work with counsel to try and identify and gather [34] everything that was asked for.

Q Didn't you testify last March that all you did was look in your office?

A I don't recall my testimony as being just that.

Q Okay, well, we'll show that to you later.

MR. CHRISTENSEN: May I stand next to the witness and share this with him?

THE COURT: You may.

Q (BY MR. CHRISTENSEN) Mr. Short, I'll show you a transcript of a hearing dated March 5th, 1995. I think that's, it should be '96, shouldn't it? I think that's a typo. It was just a few months ago, wasn't it?

A I believe it was

MR. BELNAP: What page are you on, counsel?

MR. CHRISTENSEN: I'm on the first page right now.

MR. BELNAP: What page are you going to?

MR. CHRISTENSEN: I'm going to volume 1, page 30.

Q (BY MR. CHRISTENSEN) You were asked by Mr. Humpherys, "Now, Mr. Short, you've signed each of the requests for production of documents and interrogatories on behalf of State Farm, haven't you?"

And your answer was, "I have."

[35] And the question was, "All right, now, I'd like to understand a little bit about how you researched some of the conclusions that you reached. For example, when you're requested to produce the manuals that you said you got in '89, did you go through and request all of the offices search for all of the back dated articles and portions of the manuals that there might be?"

And then you said, "When was that?" Right?

A Yes.

Q Mr. Humpherys said, "Back in '89 when you first got them." And what was your answer?

A I said, "I did not." But that does not refer to my work with the general claims people and the divisional claim superintendent. I took that to mean all the other offices, either in the state or throughout the country.

Q Well, let's go to the next question. The question was, "You only pulled them off your desk; is that right?"

And your answer was, "From our office, yes." Wasn't it?

A That is where they got the volumes of manuals that were produced, yes.

Q And then the question was asked, "All right, so you did not seek any further search into State Farm's [36] claim department, anywhere else in Utah, did you?"

And your answer was, "I did not. I had updated manuals, I believe." Wasn't that your sworn testimony a few months ago?

A That is, and that would be today. The manuals that I use are the same manuals that everyone else has. And they're updated periodically. What I have and would use would be what the other people would have and use. That's why we took the manuals from my office.

Q But the request was sent to State Farm as a company. Doesn't it have many offices all over?

A Oh, absolutely. There's thousands of, a thousand offices or something like --

Q And has a big home office, Bloomington, Illinois?

A It does. But I think what I'm trying to say, and have you understand, is that the manuals that are used are updated periodically, and those manuals are the same manuals that I would use, that anyone else in the other offices in the state would use.

Q We were asking you for the manuals from 1981, when the Campbell accident happened. Wasn't that clear from the request we put up on the screen, as well as other materials?

[37] A Yes.

Q And you responded, in essence, by saying, "We don't have them," and we find out six or seven years later that all you did was look on your desk.

A That's inaccurate. I looked, with the help of the divisional claim superintendent, and with the people at corporate, I looked to see what was there. I used as a starting point the basis of my manuals, yes. I mean that's -- You know, this is a Utah case, we're in Utah, and you asked for the manuals, and that's where we started.

Q Didn't you testify, didn't we just read, when Mr. Humpherys asked, he said, "For example, when you were requested to produce the manuals that you said you got in '89," and he's talking about the ones you gave to us back in '89, "did you go through and request all the offices search for all of the back dated articles and portions of the manuals that there might be?"

And you asked, "When was that?"

The question was, "Back in '89, when you first got them."

Your answer was, "I did not."

And then you were asked, "You only pulled them off your desk; is that right?"

And you said, "From our office, yes."

[38] And the question was, "All right, so you did not seek any further search into the State Farm claims department anywhere else in Utah, did you?"

And your answer was, "I did not. I had updated manuals, I believe."

A Is there a question there?

Q No, I'll move on. Now, a few days before the hearing that was held in this court last March, you did go around, finally,

to all the offices in Utah. You went to every office, and you looked for old manuals and old claim school notes and old things like, that met the description we put up on the screen; isn't that true?

A Yes, I went to each of the offices throughout the state. Prior to doing that I sent a note to everyone in the state, and asked them to look and see if they had any old outdated, obsoleted information laying around that wouldn't have been in our manuals.

Q And you did that in 1996. Isn't that true?

A Yes, I believe it was the first part of '96.

Q But you didn't do it in '89.

A In '89, when I responded to those requests, I worked very hard to try and meet those requests. There's been a tremendous amount of hearings and discussion on the discovery requests and what they entail and what they didn't, and time periods. At all [39] times we've tried the very best to provide you with all information that we have.

Q Well, that's not true, is it? You looked on your desk. You did not look further in '89.

A Absolutely true. I looked in my desk, I looked where I told you. In our office. I looked to make sure that we provided all the manuals you asked for.

Q All that you had in your office.

A Yes, plus what else they might have, as we looked through the region and through the people at corporate. The scope of those requests are such that a local person would not have all those. I had to have some help. And that's all I did, was go out and ask others to look and see if they had any of the other information that was being requested.

Q All right, let me move on. Now, when you went, shortly before the March hearing of this year, out to each office in Utah to look, you knew before you went you weren't going to find the stuff, didn't you?

A No, I didn't know what I'd find. And, in fact, after we went out we found some old, obsoleted, outdated stuff that people

had kept that we didn't expect to be there. Because the manuals should have been updated.

[40] Q Okay, let me show you. Mr. Short, after we made this request for manuals in '89, and you looked on your desk and then responded, essentially saying you didn't have manuals from the '81 time period --

MR. BELNAP: Your Honor, that misrepresents the facts in this case, because the manuals were produced. There are materials in those manuals that on the face of them are dated back into the seventies in some areas. And yes, they've been updated, and some of them had a date of '83 or '84 or '86 on them. But there are certainly a number of pages in there that are dated back into the seventies, even.

Q (BY MR. CHRISTENSEN) Mr. Short, if you have the manual, the State Farm Auto manual that applies to May 22, 1981, the date of the Campbell accident, I would like to see it. Do you have it?

A We have provided you all the information that we have.

Q Do you have it?

A I don't know what's included in all that information. I can't remember. There's volumes of stuff that have been produced in the case.

Q You're not prepared to represent to this court that you have the manual that was in place from State Farm Auto from May 22nd, 1981, are you?

[41] A I'm prepared to state to the court that we have looked everywhere we can to provide all the information requested. I would point out that the manuals are updated.

Q Please answer my question, Mr. Short.

A As things change --

Q We're going to be a long, long time here if you don't just try to listen to my question and answer it.

A I'm trying to answer the question.

Q Are you here to represent to the court that you have produced the State Farm Auto manual that applies to, that was in effect on May 22nd, 1981?

A I'm here to represent to the court that we have produced --

Q Yes or no, please.

A -- produced everything that we could gather.

Q Yes or no, please.

A I can't answer that yes or no.

Q You don't know?

A My testimony would be that we have tried to gather everything that we have that related to that time period, or any other time period, that the court said we need to gather this stuff. We've went out and we've looked. Just like I went through the state. I spent [42] days and hours trying to find anything that we could.

MR. CHRISTENSEN: Would you read that question back to the witness, please.

(WHEREUPON the pending question was read by the Reporter.)

Q (BY MR. CHRISTENSEN) Would you answer it please? Yes or no?

A I guess what I'm trying to say is we've produced everything that we have that relates to that time period. Some of the stuff in the manual --

Q Let me stop you, please.

A -- has been updated.

MR. CHRISTENSEN: Would you read the question again, please, to this witness.

(WHEREUPON the pending question was read by the Reporter.)

THE WITNESS: I'm here to represent that we've produced everything that we have of that manual --

Q (BY MR. CHRISTENSEN) Yes or no, please.

A -- that applies to that date.

Q Do we have it?

A I don't know.

Q If I represent to you that we don't, you wouldn't say that's wrong, would you?

A I couldn't say absolutely what was contained [43] in the manual at that time, because it is updated as things change.

Q All right, I'll move on. Now, on April 5th of 1990, an attorney that works in the Mountain States Regional Office in Greeley, Colorado of State Farm came and participated in a staff meeting in Utah; isn't that true?

A Yes.

Q And you were present at that meeting?

A Yes, I was.

Q And it involved virtually all of the claims managers from Utah; isn't that true?

A Yeah, I believe it would have been at that time all of the auto claims management people.

Q Okay. And this attorney's name was Janet Cammack?

A Yes.

Q And before she came to Colorado to work for State Farm, she worked for State Farm in Texas?

A I believe that's true.

Q All right, let me review this with you. This is a memo that Samantha Bird has provided us. This is not a document State Farm produced, is it?

A I don't know where it came from.

Q In fact, State Farm won't admit this is an [44] authentic document, will they?

A I don't know that. I don't know it's been asked. I don't recall.

Q It has. Ms. Bird, who will testify next, put out this E-mail the day after the meeting. And I want to review this with you.

It says, "Yesterday in the staff meeting we talked about the

need to purge our desks of old memos, notes, and procedural guides."

And by the way, this was written in April of '90, and our request to produce manuals and some of the very things she's talking about were sent in August of '89, a few months before; isn't that true?

A Yes.

Q "With the increase of bad faith suits being filed against State Farm, it is important that you get rid of all of your old stuff I know you have lurking around in your drawers and filing cabinets. Please get rid of any old memos, claim school notes, old seminar or claim conference notes, and any old procedure guides you may have. They --" And "they" means State Farm, right?

Then it says, "They are trying to avoid having to come up with old records when the request for production of documents comes in, and they request all training manuals, memos, procedural guides, et cetera, [45] that are in the possession of your claims reps and management.

"Apparently they had a request like this in Texas, and each person had to surrender all their old junk. I guess corporate is not even going to keep old CPG guides, old claim manuals, et cetera."

When it says, "I guess corporate is not even going to keep it," that means Bloomington, the home office; isn't that true?

A That's where our corporate office is.

Q "We will only have what is currently in effect. That way if they subpoena our claim manual for U claims for '87, for example, we can say we don't have it. This should be easier than trying to produce it, or having to defend it.

"So look through all your old stuff and dump it, you won't ever miss it."

Okay, I'm going to follow up on that. Wasn't the Campbell

versus State Farm case the only bad faith case pending against State Farm in Utah when this meeting of Utah claims managers was held?

A To the best of my knowledge, I believe it was.

Q And we'd already asked for the stuff that's described in that memo, hadn't we?

[46] A The -- I believe, I guess the initial interrogatory requests had been filed and responded to with all the information we'd gathered.

Q From looking in your desk?

A From looking in my desk, from looking with the assistance at corporate, and everywhere we thought we might have that information.

Q You're aware, are you not -- You heard the testimony under oath last March, that corporate claims they don't have any of these things, these old manuals, but they get rid of them?

A I know that it has not been a practice to keep all the outdated sections. As the manuals are updated we replace them. It's very important that we operate from current material, and that our claim reps are reading the current material, that they're up to date, that they're handling things as things evolve and change, the law of insurance, all of those things.

Q Mr. Short, you were expressly told in this meeting, "Get rid of it so courts and juries don't see it in bad faith cases," weren't you?

A That is not my impression or recall of that meeting at all.

Q Do you think Samantha Bird fabricated this?

A I'm not saying Samantha fabricated. I was at [47] the meeting, and as I recall the meeting, the discussion was about making sure that we provided consistent responses to discovery requests.

As part of that meeting it was discussed that, in some cases they had found that people had kept obsoleted and outdated portions of manuals, and there was some confusion as to whether

or not they were using those things in their current handling, which wouldn't be proper. And so this was an attempt to make sure that our people were working from current information.

Q So your testimony is all this was, was a records management meeting.

A No, it was a staff meeting where we discussed various topics. This was a topic that came up as we discussed the need to make sure that we were consistent in our responses to discovery requests. We wanted to make sure that, you know, when we told someone in some place that we had something or didn't have it, that we were accurate with that.

Q Is it your testimony that it was not discussed that you needed to get rid of evidence that might be used against State Farm in bad faith cases?

A I don't recall a discussion of- - And we never would get rid of any evidence that would be pertinent to any case. We would keep anything that [48] would be required for any legal proceeding.

Q Well, Mr. Short, you had already signed under oath answers to discovery requests in this very case, as of the date of this meeting, hadn't you?

A Yes.

Q Did you speak up and say, "We can't do that, because this material has already been requested in the Campbell case"?

A We had already provided the information. At that time it didn't even occur to me that, you know, that there would be anything there. And we went out later, even after this meeting in '96, I searched each office. We came up with old stuff that people hadn't replaced.

Q You came up with very, very little, didn't you?

A We came up with quite a bit of stuff. I know a lot of it was duplicative stuff that had already been produced. Stuff, I think a lot of the stuff -- You had a mountain of stuff that you guys had gathered from various places. The stuff we were

searching for, I think a lot of it you probably already had.

Q Most of the State Farm documents in this case came from Mr. Fye, not from State Farm, didn't they?

A I don't know if that's accurate. I know [49] Mr. Fye and some of the other people have provided documents. I know that we've produced and gone through a mountain of documents.

Q You knew when you went in 1996 out to look so that you could come into court and represent that you'd looked, that if the people had followed the instructions given in this meeting in 1990, the stuff would be gone, didn't you?

A I didn't know that at all. The thought never occurred to me. I know that if we keep our manuals in the field, and it's very important that we keep them updated and we keep them current, I wouldn't expect to find a lot of the stuff that we found.

Q There would have been a heck of a lot more of it in '89 if you'd gone and looked before this meeting than you found six years later in '96 after this meeting, wouldn't there?

A I don't believe that's true. From the search that I did, we found the stuff that was there, and it was provided.

Q Mr. Short, didn't you testify in a hearing last March that you knew that if everyone had done their duty as instructed in what you'd just read, meaning this memo, would you expect to find any old manuals around Utah in your search a few weeks ago? And do you recall [50] what your answer was?

A I don't.

Q I'm on page 37. Your answer was no; isn't that true?

A That's what it says, is no.

Q Now, the Samantha Bird memo that we've just looked at is not the only document relating to this meeting, is it?

A I believe you've showed me before something else.

Q There were minutes kept of this meeting, and again, State Farm didn't produce these, did they?

A Again, I'm not sure where it came from. It looks like something that came off of our computer system.

Q If I tell you that Samantha Bird gave them to us, and not State Farm, you wouldn't dispute that, would you?

A I wouldn't.

Q And these were prepared by Elaine Rigler, not by Samantha Bird; is that correct?

A It identifies the sender as Elaine.

Q Was she the secretary at the meeting?

A She must have been the minute taker. The staff meeting wouldn't generally include any [51] secretaries, and I don't know that Elaine was ever a secretary. She may have been at some time.

Q These minutes went to you, among others?

A Yes, I'm identified on there.

Q And these are all the people that attended. Including Bob Noxon, whose name has come up in this case, and others; isn't that true?

A That looks like a list of the attendees.

Q Do you see number 8 on there?

A Yes.

Q Let's read that. "We were instructed to destroy old memos, claim school notes, old procedures, old P and S manuals, et cetera. The reasoning behind this is that we do not keep discoverable --" "Discoverable" means that if people sue State Farm they can ask for it through discovery, right?

A I'm not sure what "discoverable" means. In discovery you can ask for about anything, I guess.

Q "We do not keep discoverable information that could be asked for in bad faith suits."

You didn't keep your copy of these minutes, did you?

A I did not.

Q Now, Mr. Short, in a big company like State Farm, it would make a lot of sense, wouldn't it, for [52] somebody, maybe

in a historical department, that at least one copy of each version of each manual be kept for historical reasons?

A I can tell you that we now have a records management program where we try to manage the volumes of documents that go through the company.

Q Please answer my question, sir.

A I'm trying to.

Q I don't think you are, I'm sorry. Wouldn't it make sense, in a big company like State Farm, for, in a historical unit or someplace, that somebody have a copy of each manual for historical reasons?

A It makes sense that we manage our documents and our records. With 70,000 employees, there's numerous volumes of paper that are created every day. I think it would be an impossibility for us to keep one of everything.

I think also I would say that we have learned that, yeah, it's probably a good idea to have some of that stuff, and now we've created, or in trying to compile all this stuff, because we've found that it might be useful or necessary.

Q Do you know what this is, Mr. Short?

A No, I do not.

Q It's some microfilm that State Farm produced [53] to us. And I don't know it's necessary to open this. Do you know how many pages you can fit on a reel of that size?

A I have no idea.

Q Would five to 10,000 pages sound about right?

A I have no idea. If that's what it is, I take your word for it.

Q You can get a lot of manuals on one of these, couldn't you?

A You could put a lot of stuff on there. But the volumes of that we have over the years, and even the time to microfiche it and preserve it and take care of it --

Q By the way, these aren't the manuals, are they?

A I have no idea.

Q Are you claiming that in the huge corporate conglomerate offices there's not enough space for something of this size to keep a copy of the manuals?

A I'm telling you that, as we try to manage our records, we keep everything that has a business purpose, everything that has a legal purpose, everything that has a regulatory purpose. And we maintain those as long as they're useful. But we do not maintain things forever.

Q Weren't you told to get rid of manuals [54] because State Farm did not want to try to have to defend in a bad faith case what was in those manuals?

A At the meeting -- And my recollection of the meeting and what I got from the meeting was that it was important that our claim representatives and people work from current documents, and that there had been confusion where someone had taken a document that was outdated, obsoleted, many years ago, fifteen, twenty years ago, and tried to indicate that that was the way we handled claims.

And so we needed to make sure that our claim representatives operated from the current stuff. And that's what we were trying to do. To eliminate the confusion.

Q Let me try the question once more. Weren't you told in that meeting that State Farm did not have to defend what was in those old manuals, in bad faith cases?

A My recollection of the meeting was, as I said, it was we were trying to avoid the confusion. It was hard to --

Q Okay, we've heard that. I don't think we need to hear it again.

A That's my answer. That's not my memo, so those aren't my words. I'm just telling you what I [55] recall of the meeting.

Q Is it your testimony under oath here today that this was never discussed in that meeting?

A I'm telling you today that my recall of that meeting, and the impression I got from our discussion, was that there was a

need to make sure we operated from current material, and that we should make sure they're updated, and the obsoleted, updated material should be disposed of.

Q And so your testimony is that was never said, it didn't happen in that meeting.

A I'm not testifying to that, no. That meeting was a long time ago. We talked about, you know, as we were talking about the discovery requests and the needs to be accurate and consistent in our responses, it very well could have been that that topic came up. I'm just telling you what I remember from the meeting, the impression it made upon me, and what we need to do as we work.

Q As best you can tell, this instruction was carried out, wasn't it?

A I -- No, I wouldn't say that. As my search through the state, through those offices, I turned up a bunch of stuff. It didn't appear to me that much, if anything, had been done for people to go back.

[56] Q If I represent to you that State Farm has represented in this case that they do not have the old manuals, would you say that's not true?

A I would say that we have tried very hard, and we have produced everything that we could gather and give to you.

Q Everything that wasn't destroyed.

A We have produced everything that we have. Anything that had been obsoleted or outdated that we no longer had, we obviously couldn't provide. But we tried to provide everything.

Q Have you ever seen this book, Mr. Short?

A I believe it was produced in a hearing at some time. I've never seen it other than in this courtroom.

Q I'm sure it's fascinating reading.

A What's the name of it?

Q It's called "Electronic Marvels at State Farm Mutual." State Farm has a huge computer database, doesn't it?

A They have a database, and I'm sure it's a large one, that maintains the policy records, the claim records, and various things.

Q You could easily keep manuals on a computer disk, couldn't you?

[57] A I don't know that we could say it would be easy for us to keep everything on State Farm's computer system. With 70,000 employees and the numerous claims and policy holders we have, I don't think our database is unlimited.

Q But you could keep manuals if you wanted to.

A We keep everything that we know has a business purpose, that has a legal purpose, or has a regulatory purpose.

Q Is keeping evidence that's been requested in a case, does that have a legal purpose?

A Absolutely. And we have never destroyed any evidence.

Q Do you deny what we just put up on the board?

A That doesn't say that we destroyed any evidence.

Q No, it said destroy manuals and claim school notes, and a whole laundry list, so courts won't get them in bad faith cases. Isn't that evidence?

A I don't believe the definition of evidence is everything that you ever had or would ever have. Evidence is something that the court has ordered to be produced, and we've done that.

Q So you feel that you're free to destroy it until there's a court order for you to produce it.

[58] A I believe that we have to manage our records, and that's all we attempt to do. I don't believe we can anticipate that every piece of paper that we produce or whatever will be needed at some time in the future.

* * *

[80] * * *

Q (BY MR. CHRISTENSEN) Mr. Short, as we took a break, we'd just discussed whether it would make sense for a

company to have, someplace in the company, a historical record of each version of each section of the manual so that later it could be determined how the manual read at any given date.

Are you aware that Mr. Frank Comella from the home office of State Farm in Bloomington testified in the Schlossberg case on November 15th of 1988 that there was a historical folder kept at State Farm for each [81] version, each section of the manual, with the date of each change? Did you determine that in your efforts to produce documents?

A I'm not aware of his testimony in any case, no.

Q I think Mr. Fye also mentioned that. Mr. Comella testified in our case, just a few months ago, that those historical files no longer exist. And the question I want to ask you is this. If you had checked those historical files back in 1989, when we asked for those manuals, you may well have found them; isn't that true?

A I can tell you that I checked everywhere, and with all the people that I knew, to check to see if there was any information out there that was requested.

Q You keep saying that, but you've admitted that you just checked on your own desk in your own office. Do we need to go through that again?

A I don't think that reflects my testimony in whole. We checked, I checked everywhere I could.

Q You did not check with the home office to see if they had historical files on manuals in 1989, did you?

A Yes, we checked with home office to see if they had anything that pertained to the requests that [82] were presented.

Q Did they tell you that the historical files on the manuals had been destroyed?

A I don't recall any indication of, that there were any historical files, no.

Q So as far as you're aware, the home office has destroyed any prior versions of the claims manuals, claims notes, claim school materials, and so forth?

A I'm not aware that the home office has destroyed anything that relates to this case. We do have the records management program that we've talked about, and I do know that --

Q We're going to talk about that. So we'll go into that in a few minutes. Certainly consistent with the April 6th, 1990 memo that Samantha Bird prepared, when it said, "Corporate isn't going to keep a copy, either," isn't that consistent with that memo, that the home office has gotten rid of the old historical files on claims manuals?

A I'm sorry, but I'm not sure -- Isn't what consistent?

Q That the home office doesn't have those manuals any more?

A I can tell you the home office doesn't have anything other than what we produced. The memo was not [83] a corporate directive. It was something on the level, here.

Q See where it says, "I guess corporate is not even going to keep old CPG guides, old claim manuals, et cetera"? Corporate's the home office, isn't it?

A Our corporate home office, yes.

Q Now, Mr. Fye had some old manuals, but he didn't have them all, did he?

A I don't know what he had. I understand he has a tremendous amount of stuff.

Q There's no question State Farm's position is it has no manuals from the 1970s; isn't that true?

A State Farm's position is, is that in answering the interrogatories and requests for production, we looked for everything we could find. I'm aware that --

Q Please answer my question. State Farm has no manuals from the 1970s, do they?

A At this time I don't -- I'm not sure what we have. As part of this litigation, I think a tremendous amount of stuff

was produced from Mr. Fye. I don't know what we have now. I think a lot of this information you requested, it seems that you already had. And we were looking all over the country for it.

Q We could not get you to say it was authentic, [84] could we?

MR. BELNAP: Your Honor, number one, that's argumentative, and number two, we have authenticated over 3,000 pages of documents at the request of counsel.

Q (BY MR. CHRISTENSEN) When did that authentication take place, Mr. Short?

THE COURT: Sustained as to the objection to the last question.

Q (BY MR. CHRISTENSEN) Let me move to the Excess Liability Handbook. You attended hearings, you're aware that that was a document we felt was important?

A I'm aware that there was a request for a manual called an Excess Liability Handbook that was published in, I think about 1972, that was obsoleted in 1979, that was used by separate claims division other than the auto company.

Q Okay. My question is --

A Something I've never seen or heard of until this litigation.

Q You knew that we were trying to get that manual, because as far as we knew, it was the only manual from the seventies that had survived.

MR. BELNAP: Your Honor, what --

MR. CHRISTENSEN: Didn't you?

[85] MR. BELNAP: I'm going to object to the form of the question. Counsel is asking this witness to comment on what is in counsel's mind. So as framed, it's a question that he's asking him to speculate on.

MR. CHRISTENSEN: Let me rephrase.

Q (BY MR. CHRISTENSEN) You knew that was a manual that we were requesting that State Farm produce, or authenticate, didn't you?

A I knew that that was a subject of this litigation.

Q And State Farm refused to authenticate that manual until the morning that the trial started last October; isn't that true?

A I don't recall. I know that there was numerous hearings on that manual, on whether it was even relevant to this case, because it was a manual for another claims organization that State Farm has.

Q Let me see if I can refresh your memory. See from the transcripts of the morning of trial last October, where Mr. Hanni says, "We are prepared to produce a copy of the excess manual, and we will do that. Not the one that was produced in the Singh trial, because that was bar coded, but we will produce to you a copy of the manual that was produced in the Singh trial, but it has absolutely nothing to do with this case. But [86] to lay at rest the idea that we won't, that we will not produce a copy, we're going to do that. And we'll do it today."

Do you remember me saying, "Well, it's taken two years, but that's great news"?

A I see that's what it says. I don't remember that.

Q You were present, weren't you?

A Sure. I think I was.

Q Was State Farm's -- Mr. Short, I want to show you a document that we first found yesterday. I'm going to represent to you that it's an affidavit from Ray Summers' case against State Farm. I'm going to refer you to paragraph 3. It says, "The first time --" And this is an affidavit signed by Mr. Cutler. He was a State Farm employee, was he not?

A Grant Cutler, is that who you're referring to?

Q What did I say?

A Signed by Grant Cutler or Ray Summers.

Q I'll show you the second page, signed May 21st, '86, by Grant Cutler. Paragraph 3 says, "The first time I ever saw a booklet entitled the Excess Liability Handbook was on, number III was on May 21st, 1986 when Robert Burton showed this booklet to me. [87] Prior to that time, I never saw, reviewed, used, or was even aware of the existence of the manual."

Do you have any explanation to why, if State Farm --

MR. BELNAP: Your Honor, could we approach?

MR. CHRISTENSEN: -- had that manual in Salt Lake City on --

MR. HUMPHERYS: Roger, he's making an objection.

MR. BELNAP: Can we approach the bench for a moment?

THE COURT: You may.

(Side bar conference held out of the hearing of the Jury.)

MR. CHRISTENSEN: All right, I've used the word "authenticate." And that has a special meaning in this context. And let me take a stab at explaining that.

When one side asks another side to authenticate a document, what they're asking is that the side agree that it's a -- and usually it's a photocopy -- it's an accurate photocopy of a valid, real document. It does not mean, if someone, one side admits that it's authentic, that it's necessarily relevant to a case. That's a different issue whether it's relevant.

[88] But a request to authenticate that, it's asking one side to admit that, yeah, it's an accurate copy of a real document. Does that sound okay?

MR. BELNAP: Yeah. I would just like to add that you're asking a person to authenticate, or a company, or a defendant to authenticate that this is a copy of a document, or one of their documents. And if they are not willing to do that, that would be a basis of saying, "This is not our document and so we can't authenticate it." Is that fair, Your Honor?

THE COURT: I think that's true.

MR. CHRISTENSEN: Sure, that sounds fine.

Q (BY MR. CHRISTENSEN) Now, the question I started to ask, Mr. Short, do you have any explanation for why State Farm, who obviously had the Excess Liability Handbook in 1986, in Salt Lake City, would refuse to admit that that was an authentic document, in this case, up until last October?

A Since you're asking my ideas, the only thing I could say is, I don't know where the copy or the copies came from,

I don't know if we could tell whether it had been altered or not. I know there was a lot of hearings and stuff on whether or not that document was a State Farm document, was --

We spent a lot of time in court on that [89] document. A lot of discussion whether it was relevant. I don't know. I can't even speculate.

Q Mr. Burton helped you prepare answers to interrogatories in this case, did he not?

A Among others, he did.

Q In the Campbell case? He used to be an attorney with Strong and Hanni working on this case?

A Yes, that's correct.

Q Now, Mr. Short, we also requested that State Farm produce tapes and printed materials and so forth relating to divisional Claim Superintendents Conferences, did we not?

A I believe that's right.

Q I'll represent to you that this is a transcript of the '86 divisional claims conference. It covers approximately ten video tapes. We obtained that from Mr. Fye. Mr. Fye testified that in a case in Arizona, State Farm denied the tapes from the '86 conference existed. When it was later discovered they did, they were produced in Arizona, and that's how he obtained them.

Isn't it true, Mr. Short, that State Farm claims that none of the tapes or significant materials from any other divisional Claim Superintendents Conferences exist?

[90] MR. BELNAP: Your Honor, we have produced the '82 documents that you requested, so I'm going to object to the mischaracterization of that testimony.

MR. HUMPHERYS: Your Honor, that is not true. He produced an index, and he produced --

MR. BELNAP: Let's go to the bench.

MR. CHRISTENSEN: I think I can solve this. That's why I used the term "significant documents."

THE COURT: Approach the bench.

(Side bar conference held out of the hearing of the Jury.)

Q (BY MR. CHRISTENSEN) Mr. Short, I'm going to show you a one-page document that we obtained from Mr. Fye. At the top it says "Divisional Claim Superintendents Conference," it looks like a three-day conference in '82. It lists the different topics.

We look at these, the majority of them deal right with issues that relate to questions in this case. Let me point some of those out to you: Insurer's duty to communicate with insured. Insurer's duty to make a good faith evaluation. Insurer's duty to explore settlement. Insurer's duty to settle timely and reasonably. Insurer's duty to make a full investigation. Insurer's duty to consider insured's interests, duties -- That one probably doesn't apply. [91] Refusal to discuss settlement or reveal limits. Failure to settle within time limit. Unsuccessful appeal after excess judgment. Insurer will not pay full policy limits. Measure of damages regardless of insured's financial strength or bankruptcy. Punitive damage aspects of excess decisions. Insured or estate unable to pay excess judgment. Negotiations, a factor in determining bad faith. Test for extra contractual liability, bad faith, or negligence. Extra contractual liability, creation of a private cause of action. That'll give some examples. Where are the tapes from this conference?

A I have no idea whether it was even taped.

Q Was it a three-day conference?

A That agenda seemed to indicate it was.

Q I'm going to show you -- and this is trial page 49, from Exhibit, it's from the "Obiter Dictums", I believe.

MR. BELNAP: What year is it?

MR. CHRISTENSEN: I think this is from Mr. Fye's exhibits.

MR. HUMPHERYS: It's Exhibit 57.

Q (BY MR. CHRISTENSEN) Do you know what "Obiter Dictums" are?

A Yes.

[92] Q Is that the company newsletter, at least it used to be?

A It was a publication that was, at one time used, yes. I don't know that it was a newsletter, as such.

Q Right up at the top, here, I'm going to point you to this segment which reads, "Selected segments of the 1989 auto divisional claim superintendents conference have been edited for use in seminars and workshops on a local basis. The major topics covered include claim training litigation, property matters and medical cost management. The tapes may be ordered individually or as a set of eleven using normal auto claims lending library procedures."

Mr. Short, where are those video tapes?

A I don't know, but I would -- As part of our records management program, as things become no longer useful or needed, they're disposed of. They're recycled. We recycle the tapes. We use them again. We don't keep a copy of everything forever. It's not needed.

Q Do you have any idea why the '89 tapes would be recycled, and the '86 wouldn't?

A I have no idea, other than they must not have been of use any more. Different documents have [93] different useful life spans, I assume.

Q Now, Mr. Kingman testified here a few days ago that he attended the '95 divisional claim superintendent's conference. I asked him if it was video taped, he said he thought it was. Where are those tapes?

A I don't know that it was videoed. I've never been a divisional, and I haven't been to a conference. If you asked for them and we had them, you would have them.

Q Yeah, but State Farm's position is they don't have them, right?

A As we've answered.

Q All right, I'm going to move to another document. See this document entitled "Performance Planning and Review," which is Exhibit 26?

A Yes.

Q State Farm claims they don't have this document, don't they?

A From just looking at that one, I don't know that it is. But if you represent that it is, I'll accept that.

Q This was something obtained from Mr. Crowe; does that sound right?

A Mr. Crowe, Mr. Fye, I don't know who.

[94] Q This was related to the PP&R program when it was introduced in 1979?

A That's your representation. I don't have the document so I can't --

Q Well, I can show you, but I don't think I'm misleading you.

A Okay, I'll accept that.

Q Now that State Farm has this document, because Mr. Crowe kept it, will State Farm keep it or destroy it?

A If it has value, we'll keep it, if we have it. You know, many of the things that we're talking about, here, deal with programs that evolve over time. We don't keep a copy of everything.

Q Do you know whether State Farm is representing in other cases right now that it doesn't have that document?

A I do not know.

Q Now, you've mentioned a document retention program, it came out in 1994 or five, I believe. To introduce that program, State Farm sent out a video tape called "Buried Alive"?

A Yes, I believe so.

Q Have you watched this video tape?

A Yes, I've seen that tape.

[95] Q It's about twenty-three minutes?

A I don't recall.

Q Isn't it true that a primary message, it's not the only message, but a primary message of this video tape, that every State Farm employee is supposed to see, is if you keep old documents, they can be used against the company in court?

A I don't think that's the message. I think the message is, that there's a need to manage the records, as like we've found that there is confusion when there's stuff that's twenty-five years old, that's no longer relevant, that's, I mean that's obsolete that maybe is used by something else.

I mean it -- That's what it says, is a company can be buried alive by the mountains of paper if they try to keep it, and it causes confusion and --

Q Isn't over half, probably two-thirds of this tape showing a make-believe company who got sued, and old documents that employees had kept became the key evidence against the company in a lawsuit that was filed against that company?

A In the tape there's an example, and it's a company, and it's been a while since I looked at the tape, but it talks about the confusion that I've been talking about.

[96] Q It talks about the documents being used against the company in court, doesn't it?

A It talks about the confusion that they make in a lawsuit case.

Q And it gives an example of someone like Mr. Crowe or Samantha Bird, who keep documents at their home, doesn't it?

A I don't recall that. It may.

Q Don't you remember the guy named Charlie?

A I don't remember any of the names.

Q As part of this new program that State Farm instituted in '94 or '95, they sent out letters to hundreds of law firms that represent State Farm around the country directing them to return or destroy documents, didn't they?

A I -- There was a letter sent out that asked the attorneys to return our original file material, and to dispose of whatever

was no longer needed, relevant, didn't have a purpose.

Q Now, moving to another subject. At the March 5 hearing in this case, a woman by the name of Karen Ortiz came out and testified as a representative of State Farm from the home office. Do you remember that?

A I do.

Q And she admitted at that hearing, where you [97] were present, that in any given time there's a number of bad faith cases pending against State Farm, and that in most of those cases, claims manuals, claims school things, claims handling memos, documents of that nature, are requested in most bad faith cases. Do you recall her saying that?

A I don't.

Q Would you dispute that, or do I need to look it up for you?

A If it's an accurate representation of what she said, I would say yes.

Q I don't claim it's verbatim, but that was the message. Isn't it true that at the very time State Farm was instructing its law firms around the country to destroy documents, that some of those documents were being requested in other cases?

A State Farm was never instructing anyone to destroy anything that was to be evidence, or was needed in any case that was known. I can tell you that.

As that letter you sent out, we, that we sent out, there are many cases, such as the Campbells, where we defend people, and when the case is over, we need the original material back. And those are the cases that are the majority of cases out there. And it applied to those cases, as well.

[98] Q All right. Let me move to another subject. At that hearing, Ms. Ortiz testified on behalf of State Farm that there was no historical unit at State Farm, didn't she?

A I would take what you're saying. I don't know of a historical unit.

Q And after she'd said that, I showed her a document filed in a case in Texas against State Farm, by State Farm, where a man named Dan Barringer had signed an affidavit saying he was head of the historical unit. Do you recall that?

A I don't recall the document or what it said. I know there was a Dan Barringer was a -- And I don't know what his title was, whether it was a historian or what it was.

Q Turned out what she said wasn't true, didn't it?

A I can't say that. When you say a historical unit, a unit to me connotes a group of people that we do -- I supervise a unit of people, which is about, you know, fifteen, twenty people in a unit. If you're talking about Dan Barringer being a unit, I wouldn't think he'd be a unit.

Q If he signed an affidavit saying he was head of the State Farm historical unit, you wouldn't dispute [99] that?

A I wouldn't dispute it if he said something, no.

Q Now, Mr. Short, you've worked with State Farm for about fifteen years, did we establish?

A Yes, just over fifteen years, now.

Q And is it your sworn testimony that -- Let me back up. Earlier in this trial it's been suggested by counsel that your PP&Rs would not show any emphasis on average pay per claim, or reducing average pay per claim, and I want to explore that with you.

Is it your sworn testimony that no one has ever suggested to you that average paid claims needed to be reduced?

A I don't recall that I've ever had a goal on any of my PP&Rs to reduce the average paid claim, by any specific amount, or percentage, or anything like that.

Q Didn't you testify in your deposition last April --

MR. CHRISTENSEN: I'm looking at page 75, counsel.

Q (BY MR. CHRISTENSEN) Beginning on line 10. "Did he ever suggest to you that your average paid claims needed to be reduced?"

Was your answer, "No one has ever suggested [100] to me that average paid claims needed to be reduced"?

A That's it, and that's my answer today.

Q And you were asked the question, "Or contained in, or limited in some way, or the increases limited?"

And your answer was, "Nobody has ever recommended or suggested that needs to be done to me for any of those."

A Those are my answers. Then and today.

Q I'm going to put on the screen the page from your deposition that we just looked at, 75, and I've underlined the part I read you. You would admit, would you not, that having people have goals in claims to reduce their average pay per claim would be improper, wouldn't it?

A I have never seen a goal used to reduce the average per claim.

Q And that would be improper, wouldn't it?

A To just categorically say, "We're going to reduce claims by an average amount," or something, I don't think that would be proper.

Q The claims representatives should be going to look at a claim, decide what fairly is owing, rather than to meet some goal or quota, shouldn't he?

A We take each case based upon its own merits, [101] we look at facts, specific items, everything that relates to that individual claim, and arrive at its value. If you're talking on bodily injury claims, if you're talking on damage to cars, we're looking at the estimates, we try to establish what the damage is.

Q It would certainly be true of total losses, you pay what you owe on a car?

A We try to pay what we owe in each and every case.

Q It would certainly be true of appearance allowance, an adjuster shouldn't be going out to look at a loss with the idea in

mind, "I've got a goal for appearance allowance, so I ought to try to talk this guy into this"?

A Appearance allowances are something that is a settlement option of the owner of the vehicle. I think it's appropriate to consider them on the appropriate cases.

Q But it's not appropriate to have quotas or incentives for the adjuster to try to get more appearance allowances, is it?

A I think it's appropriate to have an awareness of the applicability of appearance allowances, when they should be used and shouldn't be used, and apply them where appropriate.

[102] Q But what I'm asking you about is, isn't it wrong to give an adjuster a quota, or a goal to get so many appearance allowances?

A I've never seen a goal for that. I personally wouldn't put that on anybody's PP&R.

Q It would be improper, wouldn't it?

A I don't know if it would be improper. I think it would be difficult.

Q Well, each claim ought to be looked at on its merits, not to meet some quota, shouldn't it?

A Absolutely. That's the way we do it.

Q Appearance allowance is basically simply where State Farm pays somebody less than they're owed, isn't it?

A No, that's not true at all. It is a settlement option available to someone used in cases where there's minor cosmetic damage to a part of a car, where someone would rather accept some monetary compensation rather than replace the bumper, because it has a little scratch on it or something like that. It compensates them for living with the blemish on the car. And that's a settlement option that they agree to. Not something that we force them to take.

Q But you get them to accept something less than full repair or replacement, which they're entitled [103] to under the policy.

A We offer them the option of monetary compensation for living with a blemish on the car, some small cosmetic thing that

they feel like that it's not necessary for them to have it replaced, and they'd rather accept the monetary compensation.

Q But they can have full monetary compensation and still not get it repaired, can't they?

A They can if they wish, but there are instances where it's to their benefit to take an appearance allowance. For instance, on insured's vehicles, if they take an appearance allowance for a minor blemish on the car, say the bumper, then if they're involved in an accident after that, we'll replace the bumper if it needs to be.

If they accept full payment for the bumper, and later, and they don't replace it, and later it's involved in an accident, we don't pay for it again because they've been fully compensated once. So the appearance allowance is a monetary compensation for living with the blemish.

And there's also times when insurance companies obviously, we all know, have surcharges if you're in an accident, and the damage goes over a specific amount, you can have a surcharge. People [104] sometimes will accept an appearance allowance so that they don't have a surcharge on their policy.

Q All right, now that we've heard that, it is true that it's a device State Farm uses to pay less than it actually owes.

A That's an absolute mischaracterization of what it is. It's a settlement option available to owners of vehicles.

Q All right. If we have someone who has damage to their vehicle, and the fair cost of repair is $500, and they accept an appearance allowance of $100, there's a difference of $400.

If the policy holder said, "I don't want to fix the car but I want to be paid everything I'm owing," they'd get this, wouldn't they?

A Less any deductible.

Q Right. If they take an appearance allowance they get this, and State Farm keeps this, right?

A But they also get the advantage of, if they're involved in an accident later, that that part that they took the appearance on

will be replaced again. And they may also, in a case like that, our surcharge is geared to kick in if we pay over $400. There they've saved themselves a surcharge.

Q Okay.

[105] A That's something people are concerned about. And also there's people out there, many of us, who look at a minor blemish and realize that the repair cost of the car relates to our premiums. And if there's a minor blemish, they're perfectly happy and willing. And sometimes ask, "Hey, I'll take some money and we won't replace this and we'll save some money. And my premiums --"

Q Under my example, State Farm, if the person takes the appearance allowance, is paying $400 less than they owe. Isn't that true?

A Now, I don't believe that's true. If the appearance allowance is there, and that person decided that they wanted the appearance allowance to save themselves from a surcharge, or so that they could live with the part, and its cosmetic appearance as it is, and then later have it replaced if it's in an accident again, they're compensated, fully. That's their choice. They're offered both alternatives.

Q Okay, you've said that several times. Didn't you say in your deposition that appearance allowances explain it is for not paying full value for the repair or replacement?

A I don't know exactly what I said. I just explained to you what appearance allowance is.

[106] Q But isn't that a true statement, that appearance allowance is not paying full value for the repair or replacement?

A It depends on what context, I guess you take full value --

Q How about this one right here?

A As I explained the example, that's a situation where a person can be fully compensated. The choice is theirs.

Q And your testimony is, you tell them, under my hypothetical, "You're entitled to $500, will you take a hundred?"

A We explain it to all of them. There are people out there are, many of us, who decide that there's a good reason for them to accept an appearance allowance. They can avoid the surcharge. They can keep the repair costs down, which ultimately ends up affecting our premiums.

Q Affecting State Farm's premiums?

A Affecting the policy holder's premiums.

Q Maybe, maybe not.

A Affecting the policy holder's premiums. They're the ones that pay them.

Q You talk them into an appearance allowance by saying, "If you take the $500 we're going to raise your [107] rates"?

A We don't talk them into anything. We offer them the option, and we explain to them that they have the option of having the item repaired or replaced. They can also accept an appearance allowance.

Q Now, isn't it your testimony that appearance allowance is a very occasional thing, it's rarely used, it's not significant?

A It's my opinion that it's infrequently used, yes.

Q Certainly nothing pushed at State Farm?

A We're aware of it, and we talk about it. We're aware of anything we do that affects repair costs, premiums ultimately, all those kinds of things. We try to be responsible.

Q Didn't you say in your deposition, "It is a very occasional thing, so it is not a significant thing to happen"?

A In the number of claims that we handle, I don't believe it happens a significant number of times.

Q State Farm doesn't emphasize to their people they ought to be pushing appearance allowance. Is that your testimony?

A We don't push appearance allowances. They're a settlement option that we train our people to be aware [108] of. We train them to discuss it with policy holders, but make sure that they understand it's their option --

Q Are you going to say something new, or is this what you've said several times? Because I'd like to move on.

A I'm just trying to answer your question.

Q All I'm asking, is this something new, or is this something you've said before?

A I'm not sure what you're talking about. We've probably talked about it in more detail than we have in the past. I'm not trying to say anything new. I'm testifying just as I have before about these.

Q State Farm certainly wouldn't ever have a contest to see who could get the most appearance allowances, would they?

A I've never been aware of any contest.

Q That would be wrong, wouldn't it?

A I think it would be wrong if you tried to force those upon someone, but we don't do that. I mean it's something that I think it's valid to talk with people about. We're not talking about major damage to a car. We're talking about minor blemishes.

Q But your testimony is that when you do it, you fully disclose to the customer all their rights.

A We do, we tell them all their options, [109] settlement options.

Q Now, State Farm does use salvage yard parts to fix cars; isn't that true?

A We call them recycled parts. Quality recycled parts, we do use those.

Q Do they come from salvage yards?

A They come from recyclers, is the term they're called now.

Q Is it what I would call salvage yard?

A I don't know that. I think they used to be referred to as salvage used. I think now the term is recycle, because they use the parts. There are also places where they just take them for scrap metal, and to me that connotes salvage yard.

Q Okay. Certainly an adjuster working on a car that needs to be repaired should be free to decide whether a salvage yard part's appropriate, or whether there should be a new part; isn't that true?

A Ask that again, please. I'm not sure what you're asking me.

Q What I'm saying is, the adjuster ought to go out to look at a car and make the decision to use a salvage yard part or a new part based on whether it's right for that situation, not based on some incentive or contest; isn't that true?

[110] A I believe it's appropriate to use recycled parts for the repair of vehicles. It's a generally-accepted practice.

Q Well, you'll agree with me sometimes it's not right to put salvage yard parts in a car; isn't that true?

A On some types of things, if it may affect the safety of the vehicle, we wouldn't use a salvage part.

Q Let's assume it's that. Shouldn't the adjuster be free to make that decision on what's right for that car, and not be influenced by being part of a contest?

A They do have that right, and they make those decisions daily.

Q And sometimes depreciation is appropriate, sometimes it's not, right?

A I believe that depreciation or betterment is appropriate. It's, the basic principle of insurance is indemnity, which means putting someone back to the position they were before, not in a better position.

Q But sometimes it's not appropriate. You don't take depreciation on everything, do you?

A That's true, we don't. Sometimes it's not appropriate.

Q So that decision should be made on its [111] merits, rather than because of a contest.

A Those decisions are made on their merits, on each individual case.

Q I'm going to show you an exhibit that Mr. Davis, who testified earlier, provided to us. It's called a cost savings report. It shows equivalent parts. That's another word for the kind of parts we've been talking about, isn't it?

A I believe that's recycled or like kind and quality, whichever you want to call it.

Q Appearance allowance, depreciation. He testified they had contests in Colorado in his unit, and had goals and incentives around these. Has that ever been done in Utah?

A I'm not aware of any contests for that. I don't think it's wrong to be aware that those things affect the repairability of cars.

Q But it's not right to have a contest. That could lead an adjuster to try to use these things when it's not appropriate, couldn't it?

A I think if there was a contest, it would be to just make sure people are aware and look for those options. It's not a force to make anyone use those when they're not appropriate. The very basic thing that we're taught in all our handling is to make sure that, [112] whatever we do, it's appropriate for that individual case.

Q All right. Utah, as far as you know, hasn't had these kinds of contests?

A I'm not aware of any of those contests.

Q You wouldn't feel good about that, would you, if Utah had such a contest?

A I would think that if a contest to keep track of those kinds of things, to make sure that -- I think it's responsible for us as an insurance company to be aware of the repair costs of vehicles. Because we have a responsibility to keep insurance affordable to people. And that's all we're trying to do when we use recycled parts, that's all we're trying to do when we use betterment or depreciation, to put people back in the position they were before the accident. That's the number one thing, is to pay that.

Q State Farm's just doing this to take care of the policy holder, not to enhance its own profits; is that what you're saying?

A The ultimate goal at State Farm is the policy holder. We're in business, like any other business, to make a profit. If we couldn't do that, we couldn't be in business. I don't think there's anything wrong with that.

[113] Q I'm going to show you -- You testified Utah didn't have contests around appearance allowance and similar things. I'm going to show you a document we obtained from Samantha Bird, staff meeting notes from September 19, 1986. Let me show you the last page. It shows the copies going to different people. Do you see your name on that list?

A I do.

Q Do you see a contest on here?

A I can't hardly read that.

Q For appearance allowance?

A You'll have to read it to me, please.

Q Okay. Under D, estimatics. "One winner will be selected from the Sandy/Murray competition, and one winner from the Ogden/Orem competition. The competition will be related to cost savings in the following three areas: Appearance allowance, after-market parts, and salvage parts." Does that refresh your recollection?

A As I testified before, I don't remember, and I'm not aware of a contest. If that was there, I would say that's what it says. It's something we don't emphasize, and haven't for, I guess, for what I recall. I'm not saying, maybe it never was a part of what was done.

Q This was part of the pride month, wasn't it?

[114] A We used to have a pride month, we called it, to try to improve our efficiency and claim handling and those types of things.

Q And you were going to have a chart with race cars showing how the different offices were competing --

A And I don't recall that.

Q -- in this contest, weren't you?

A I don't recall that. It's on there, it says that, so I would say if -- Yeah.

Q And you were part of it?

A I was copied on that memo, yes.

Q Are you testifying you weren't part of pride month?

A No, I didn't say that.

Q Is State Farm proud of this?

A Proud of what?

Q This kind of stuff? Is that what pride month means?

A I think we're proud -- I'm proud of everything I do with State Farm. And I, like I said, the inference that, being aware of appearance allowances, using recycled parts, or using replacement parts, I don't think there's anything wrong with that. That's done with the interest of repair costs in mind, and that directly reflects on premium costs to the [115] policy holders.

Q But there is something wrong with having a contest that gives someone an incentive to misuse it, isn't there?

A I don't believe it's wrong to have a contest. It would be wrong if those types of things were used in the inappropriate cases. But they were not used inappropriately at any time, to my knowledge, ever.

Q I mentioned this PP&R book we got from Mr. Crowe. I'm going to put up a page from that book. The PP&R program suggested goals that dealt directly with maintaining, reducing average paid claim, didn't it?

A That sentence there says, "Reduce pendings, look to --"

Q Where I've underlined. "Maintain average paid PIP cost." That has to do with no-fault benefits, right?

A That would be personal injury protection, or no-fault. I don't think it's inappropriate to be conscious and aware of costs.

Q These are goals, though, aren't they? These are job performance objectives.

A Well, they're goals, awareness goals.

Q "Hold BI paid cost to number or less for [116] year." That deals with average paid claim, too, doesn't it?

A It says hold BI paid costs to less.

Q Isn't that another way of saying average paid claim for bodily injury?

A It sounds like it, yes.

Q "List prior damage on a certain percentage of all estimates." Is this where you go out and inspect somebody's car, and you deduct part of what you'll pay because you say the car was damaged before the accident?

A Any damage that wasn't related to the specific accident should be deducted.

Q But how can someone set a goal? They won't know until each accident whether the car had prior damage or not, will they?

A Until you look at that specific vehicle, you won't know.

Q So that's not a proper goal, is it? "List prior damage on X percent of all estimates written by a certain date"?

A It would only be appropriate for an awareness to apply if the prior damage was there. That's --

Q It doesn't say anything about awareness, does it? It says, they're suggesting a specific percentage goal.

[117] A That's what it says.

Q And the same with using used parts, or like parts.

A I can tell you that I've never, in my experience at State Farm, seen any of these used. I don't know what time frame this manual came from or anything. I can testify to you that we do those things in appropriate cases, apply prior damage.

Q All right, how about, "Negotiate appearance allowances on an X percent of all estimates written by a date." That's not a proper goal, either, is it?

A We do not do it when it's not appropriate.

Q And another one, "Settle X percent of all total losses at or below the current," is that what we call the blue book?

A There is a blue book, and there's also an NADA book. A lot of people refer to NADA as blue, but there are two separate books.

Q So there's a goal to pay less than blue book on a certain percentage of cars that are totaled, isn't it?

A It is not a goal to pay less than the value of the vehicle. Oftentimes the NADA book does not reflect the current market value for an area.

Q You would admit that wouldn't be a proper [118] goal either, would you?

A It would be appropriate to pay what we owe on each claim, that's what we do.

Q But not to decide a year ahead what percentage you're going to pay, right?

A I don't think that would be right, that would be applicable.

Q Again, that's right out of the book that introduced the PP&R program.

A So you've indicated. I'm not aware of the book. I don't know that I've ever seen it.

Q You were with State Farm for fifteen years.

A A little over fifteen years.

Q Now, we've got your PP&Rs for five years. Do you know where the other ten years of PP&Rs are?

A As in all documents, there's a record management program, we don't keep them for forever.

Q Isn't it true, Mr. Short, if we had your PP&Rs for the ten years that are missing, we'd see some of those suggested company goals in them?

A Absolutely not. My testimony here today has been specific and honest.

Q Now, State Farm seemed to be able to produce documents from the personnel records of Mr. Bruce Davis from some time ago. Aren't the personnel records a [119] permanent record at State Farm?

A I'm not sure of what the actual retention of those, all the records are. I know as employees who are actively employed, records are maintained, they're like their PP&Rs for current plus two years or three years, something. No more than that.

Q Aren't PP&Rs part of the personnel record?

A They are.

Q Now, Mr. Kingman testified earlier that he'd been with State Farm, I think it was seventeen years. We only have two years, I believe, of his PP&Rs. Wouldn't you expect, if we had the other years for Mr. Kingman's PP&Rs, we'd see some of the suggested goals in those, too?

A Absolutely not. The inferences that you're making that we would deceive or cheat people are absolutely wrong. I've worked for this company fifteen years. I've never been asked to do one thing to compromise my integrity, my values, or do anything dishonest. I'm proud to be a professional, and I'm proud to have integrity, and we don't do those things.

Q Now, you've testified that you've never had reducing average pay per claim --

A I don't --

Q -- emphasized.

[120] A I don't recall ever having that emphasized on a PP&R.

Q Let me show you a page from your PP&R from 1993. Would this be the followup meeting with your boss on your PP&R?

A It sounds, looks like it.

Q You and he talked about how you're doing on average pay per claim, didn't you?

A I can hardly read that from here. Would you let me have a copy of that?

Q Sure.

A So I could read it?

Q Do you see the part I've underlined?

A About the middle, there, where it says, "Average paid BI has dropped 3.2 percent."

Q Sure. Let's make sure we don't misunderstand that. BI refers to bodily injury cases, right?

A That's right.

Q And as part of your performance evaluation with your boss, that was not only discussed, it was noted, wasn't it?

A It was noted there that the average BI costs for my unit had gone down. It does not say that it was emphasized, and it was -- The emphasis in my PP&Rs on those kinds of things deal with, in the bodily injury [121] area, there is a significant number of claims that happen that are minor damage, that end up to where they are, the claims are inflated or built up in many cases. And by looking to not pay those claims, it has an effect on our average paid cost. If we don't pay the claims that we don't owe.

Q Well, wait a minute, did you overpay claims in 1992?

A There was probably some claims that were paid that shouldn't have been paid, yes.

Q And so you overpaid in '92, so that when you paid what you owed in '93 your average pay per claim dropped.

A I can tell you that we take each case on its own merits, and we pay what we owe on each claim. I can also tell you that it's not uncommon for an attorney to come to us on a claim we don't owe and say, "Hey, give me X-amount of dollars and we'll go away. If you don't we're going to do a lawsuit and all this." And in the past I have paid those. When they shouldn't have been paid.

Q That didn't just happen in '93; that happens every year, doesn't it?

A What I've just described?

Q Yeah.

[122] A It happens every year, but we're working on making sure we pay only what we owe. That's part of our responsibility.

Q Let me move on. I've noticed, in going through your PP&Rs, that the five years that we have really stress working on -- Let me get the right title. Stress the Bodily Injury Proficiency Program. You're familiar with that, obviously?

A Yes, I am.

Q And over the past five years, as we've looked at your PP&Rs, a major goal has been for you to stress this with your people, hasn't it?

A We -- Yes, we use the Bodily Injury Proficiency Program as part of our claim handling.

Q And a major purpose of this is to reduce average pay per claim; isn't it?

A That's absolutely incorrect. The main purpose of that is to very timely, very proactively get involved with people who are involved in accidents. It has a requirement in there for a same day contact with the person who's injured.

People nowadays want that and expect it. If we don't contact them quickly, they don't like it. It's an attempt to investigate promptly, to evaluate our claims as promptly as we can, to resolve them as [123] promptly as we can. It's an effort to provide good customer service and do the things as efficiently and timely as we can.

Q This is something I've taken out of this Bodily Injury Proficiency book.

A Okay.

Q This is from Houston. Number 2, doesn't that tell you that the company is saying that using this program will reduce average pay per claim? In fact, in Houston, they saved almost 600 bucks a claim?

A That tells you in that line, it says, "Reduction of average paid cost from May, 1990 of $578." It doesn't -- I don't know what other context is in there.

Q What about -- What's this term "average paid costs" mean? Isn't that another phrase for average pay per claim?

A That doesn't say anything about what we're not paying what we owe on claims. And the inference that a reduction in our average paid cost is something less than honest is just not right.

Q Well, it shows that when Houston used this program, they paid less in '90, apparently, than they paid in '89.

A Like many programs that any company uses, [124] they may have a reflection in their operation. And in a case like this, I would tell you that it probably reflects that we're doing a better job of paying what we owe.

Q Okay. It also said if you use this program, that it increases first contact settlements, doesn't it?

A That's what it says. I don't see anything wrong with that.

Q And it means, and also says the person that goes out to settle on the car can get them to release their injury claim too.

A It doesn't say that. I think there's an inference there. All it says is we're able to settle on first contact with some people, and that's not inappropriate.

Q But you got the property damage person settling the bodily injury claims. Isn't that what that means?

A That means that, but that doesn't mean that's not improper. Bodily injury claims handled by a PD person, a PD person has knowledge and skill in handling BI claims also.

Q All right, also from this Bodily Injury Proficiency booklet, we've got Cleveland. Doesn't this say that Cleveland's average paid costs went down by [125] using this program?

A It says that happened. But I don't know what the inference is there. That doesn't say we're not paying what we owe. We pay what we owe, because we have a program that helps us become more efficient to do our job better, to establish better what we owe, and do that, that's good business. That's a responsibility we have to the policy holders and the public in general.

Q Yeah, but didn't you testify, Mr. -- you'd think I'd learn to use this after this much time -- didn't you testify, both here and in your depo, that no one has ever emphasized average paid claim?

A It has never been emphasized in my work, as a claim representative or as a supervisor. We handle each individual case on its merits. We do watch and see what the trend is. I don't see that there's anything wrong with that. The emphasis is on paying what we owe, and that's what we do.

Q And the bodily injury program we've just been looking at is State Farm's current program.

A It's a program that we currently have, yes, the BI Proficiency Program. It's a method to maintain good contact with people, to help them resolve their claims with us.

Q No , Mr. Short, you were involved at the time [126] State Farm ultimately paid the judgments to Ospitals and Slusher in the Campbell case, weren't you?

A Yes, I issued the settlement drafts.

Q Now, State Farm claims that it was ready, willing, and able to pay those in 1986.

A That's true. We, in 1986, said that we would pay those judgments, with interest, costs, the whole thing, if the Supreme Court came back and denied the appeal that had been filed.

Q Isn't it true, in 1989, when the appeal was concluded, that there was no authority in the State Farm file to pay those judgments? You had to go get it?

A That's not true. The decision had been made -- Let me explain it, I guess. The decision had been made in '86, and it was documented in the file that we would pay those.

When the decision came down, I was the superintendent, had not been involved in the file during this whole duration. I knew we were waiting for the decision from the Court of

Appeals. When the decision came down, I sent that up through the line of management and said, "Here it is, the attorney Wendell Bennett had recommended that we not consider any further motions, we should pay this thing."

And they came back and said yeah. But that [127] had been decided before, but it was a formality for me as a superintendent. It had been communicated to you guys, everyone knew that, it had been on file with the court.

Q Didn't you testify in your deposition that there wasn't authorization in the file to pay the judgments before the appeal was concluded?

A My recollection at that time was that. I think I've just explained that. It's a technicality. It's a formality.

Q Is the claim committee just a technicality?

A It is not. I testified today, and I think you would agree that it was on file with the court, that we had agreed to pay those judgments in their entirety, and there had been correspondence and communication with Mr. Humpherys. I was probably the least knowledgeable one on the fact. Everyone else understood and knew that those would be paid, more so than I.

Q Well, you had to take this to a claim committee in '89 to get approval to pay?

A I sent the decision up the line and said, "Hey, yeah, we need to pay these judgments."

Q Did that claim committee even meet?

A I don't know if we met physically to do that. Sometimes we meet physically to discuss these, sometimes [128] it's done where we send the claim committee to the members of the committee, because of logistics, we fax it along, we review it, we discuss it on phone, or whatever. I don't recall in this instance.

Q Okay. You understood that State Farm had an obligation to tell the Campbells that the judgments had been paid, didn't you?

A I believe that the Campbells should have been told that the judgment was paid, and they were at some time.

Q You didn't do it.

A I didn't. They were represented at that time by Mr. Humpherys and yourself, I believe.

Q And Wendell Bennett?

A Wendell Bennett was the attorney that had been hired to represent them.

Q And, in fact, on that appeal, Wendell Bennett was their attorney, Mr. Humpherys was not their attorney; isn't that true?

A He -- I think they were both the Campbells' attorneys. Wendell was handling the appeal, Mr. Humpherys was handling this case.

Q The bad faith. And so the appeal, where the judgments were upheld, was Mr. Bennett was handling that?

[129] A Pardon me?

Q Mr. Bennett was handling the appeal.

A That is correct.

Q Of the judgments.

A Yes.

Q You expected he'd let the Campbells know the judgments had been paid?

A As I sit here, I would have expected Mr. Humpherys to let them know. It's common knowledge in our field that when people have representation, that you shouldn't deal with them directly. It's unethical and it's inappropriate.

Q Don't you know --

A We're trying to do that.

Q Don't you know Mr. Bennett frequently wrote to the Campbells, not frequently, but occasionally wrote to the Campbells during the appeal?

A I don't recall what correspondence is in there. I do know that they were represented at this time by Mr. Humpherys.

Q On the bad faith case, right?

A On the bad faith case. But I assume that they, being his clients, he would advise them that the case had settled. Is that unreasonable?

Q Is it your testimony it would have been [130] improper for Mr. Bennett to have sent the Campbells a letter saying, "The judgments have been paid"?

A No, but I don't think it -- I think Mr. Humpherys would have advised them.

Q Well, I don't know it is a big issue, but State Farm has made it an issue in this case, and I'm simply wanting to point out that there is nothing to prevent you or Mr. Bennett from informing the Campbells those judgments have been paid.

A And I don't --

Q Isn't that true?

A I don't want to argue with you, but Mr. Humpherys, being in touch with them on this case on a much more frequent basis than us, I think it's not unreasonable for him to have advised them.

Q Let me ask the question again. Was there anything preventing you or Mr. Bennett from sending a letter to the Campbells saying, "We've paid the judgments"?

A There was nothing preventing us or Mr. Humpherys, anyone to do that.

Q I'm going to show you what I understand State Farm refers to as a CMR. Is that a familiar term to you?

A I have heard that. I believe it stands for [131] claim master record.

Q This is a record State Farm keeps on each case?

A It's an accounting record. They are not contained in each file.

Q And does that refer to you right there, "PSHOR" means Paul Short?

A I believe that does.

Q And these are updated from time to time, as more information and more things transpire in a case?

A It's a continuing, I believe, electronic record. Like I say, it's not contained in each file.

Q Is it available to you on your computer just by punching in the claim number?

A No, not simply by doing that. It is computer generated.

Q I guess my question is, Mr. Short, can you get this document from your computer terminal, or do you have to write to the home office and ask for it?

A I probably personally couldn't get it. My secretary could.

Q I have the same problem. But it has a lot of different information on it, and I'm not going to go into most of it. Is that a fair statement?

A It looks like a lot of information, there, [132] yes.

Q Now, are you aware that State Farm claims that it does not keep track of excess judgments?

A That is true.

Q This may be a little hard to read, but on Mr. Campbell's CMR, I'm going to show you the hard copy, can you read -- See where the X is, and I'll point it out to the jury in a minute. Can you read that term?

A Yes.

Q What does it say?

A It says "excess loss."

Q Is there a check mark on it?

A There is. I would point out that, in terms of this statistical thing, excess refers to an amount beyond the minimum financial responsibility limits of a state. There's some statistical reporting that's done whenever, like today, the minimum limits in Utah are $25,000 per person. So even though a person may have $50,000 coverage, if there's a payment of $30,000, which is well below the limit, so it's not an excess case in the sense we're talking about, it's excess of the minimum financial responsibility limits, and that's what that tracking is for.

Q So this is a, part of the State Farm database, it's an excess loss, that's because of the [133] large verdicts in the Campbell case, right?

A That's because there was a payment issued in excess of the minimum limits at that time.

Q Now, if State Farm can keep track of whether verdicts exceed the state insurance minimums, it could certainly keep track of whether the verdicts exceed the policy limits, couldn't it?

A I think we could keep track of many things if there was a need for it. Excess verdicts are rare.

Q State Farm doesn't want to keep track of excess verdicts, does it?

A State Farm has not found a need to keep track of those. They're rare.

Q All right, I'm going to go back to one other interrogatory that you signed on behalf of the company. This is the third set of interrogatories and requests for productions. I'm going to put your signature up so we've got the date. You signed these January 21st of '94, these answers?

A Yes.

Q You signed them on behalf of State Farm?

A I did.

Q All right, let me refer you to interrogatory number 3. The question is asked, "To the extent not listed in the interrogatory above, for each third-party [134] claim in Utah since 1980 that resulted in an excess verdict, state the title of the case, the court where it was filed, the ultimate outcome, settlement, payment, so forth."

Now, we'll skip the objection, and it says, "However, without waiving this objection, in an attempt to reasonably respond to this interrogatory, defendant --" Is that State Farm?

A Defendant would be State Farm, sure.

Q "-- has inquired of all claims management personnel, they cannot recall any other excess verdicts during the 1980s, other than the Curtis Campbell case." That was signed under oath, wasn't it?

A That was signed under oath.

Q And you signed it.

A I did sign it.

Q You had an excess case in your own unit that you didn't disclose under this, didn't you?

A I did have a case in 1983. Excuse me, '93, I believe it was.

Q And you answered these interrogatories in 1994, right?

A That's when I signed those, yes.

Q Why isn't that case up there?

A It's an oversight. We've identified to you [135] all the excess cases we've come up with. It's an honest mistake.

Q Now, State Farm says they have seven excess verdicts, right?

A Yes, I believe we've identified those to you.

Q But you don't keep records.

A We don't. There's never been a need to keep records. When an excess comes up we look at each one, it's important, it's handled, it doesn't happen that frequently.

Q That's a misrepresentation, isn't it?

A That's a mistake.

* * *

[139] * * *

Q (BY MR. CHRISTENSEN) Now, Mr. Short, you've testified that it is State Farm's position that it doesn't keep track of excess verdicts. Let me show you a page from the Excess

Liability Handbook. I'm now looking at the Bates stamp page 2036. It's clear, is it not -- And I assume you've seen this page before?

A I've never seen that page. The Excess Liability Manual that you refer to was obsoleted in '79, and it belonged to the fire company, not the auto company.

Q All the hearings and things where we talked about this manual, you never looked in it?

A I have not.

Q Okay, well let's look in it. This says, "Since we are the largest writer of automobile liability insurance --" That's clearly State Farm Mutual Auto, right?

A Read that to me again, please? Do you have a copy I could read along with?

Q I do. This reference to being the largest [140] writer of automobile liability insurance, that's clearly State Farm Auto, isn't it?

A Yes.

Q Okay, "It is probable that we have had more direct experience with claims in excess of the policy limits than any other insurer." Then it talks about six years that they decided that such claims would be centrally controlled so that a uniform company policy would be followed. An excess claim committee was organized in the home office. At least isn't general claims in the home office?

A Yes, general claims is.

Q Then they go through and discuss 222 excess cases, I think that's referred to right there. What happened to the cases, there's a reference here that the company is very proud of how much money they've saved with such cases.

My question to you simply is this. It's pretty clear to you, isn't it, from looking at that document, that back in 1972, State Farm was keeping track of excess liability cases.

A I know this document was offered, authored, then, I believe. I don't know anything about it. As long as I've been

with State Farm, I've never seen or used this document, never been referred to, never heard [141] of it until this case.

Q But my question is, isn't it clear that in 1972, or whenever this was written, the company was keeping track of excess liability cases?

A It indicates that there was something there. I don't know what it refers to.

Q Okay. Now, in your deposition, Mr. Short -- and maybe I can shorten this exam, in the interest of time -- I'm going to refer to page 53 of your deposition. You were asked the question, "My question was, based on your experience does State Farm encourage first contact, or first call settlements?"

Actually, I think Mr. Humpherys took your deposition, didn't he?

A He did.

Q And your answer was, "First call settlements, to my knowledge, are not encouraged. They are an option to be considered on an individual basis if applicable."

A I would agree with that.

Q Okay. You also testified that you were not familiar with the term "controlling the claimant."

A I -- Yes, sir, I believe I testified to that, yes. That that wasn't terminology that we used in our claim handling.

Q Let me show you -- And this is a page taken [142] from this bodily injury proficiency program. And this is the current program that you're emphasizing?

A We do have the BI proficiency program. I assume that page is one that hasn't been updated or something.

Q Let me read you the underlined sentence, "By contacting the claimant and insured promptly, first contact settlements should increase." Doesn't that suggest that State Farm is encouraging first contact settlements?

A I don't know as it says we encourage them, but it says that they would increase if we do a good job of contacting people.

Q Okay. "We will be building rapport, which will enable us to control the claim and close it earlier."

A Absolutely. What we need to do is contact people, talk to them about their claims, and get them resolved. If we don't do that, people are unhappy. They haven't been compensated. I don't see anything wrong with that sentence.

Q Okay. And I've also underlined part of a sentence, let me read the whole sentence. "One of the added benefits of these statistics is the ability to apply the statistics obtained to the PP&R evaluation."

[143] A That refers specifically to the goals that we have in the BI proficiency, is same day contact with injured parties, and then to be able to meet with them in face-to-face situation within five days, so that we can discuss their claim and start learning about that. And those are the things that we track.

Q But my point simply is, it's certainly anticipated that the practices and policies set forth in this will be part of the PP&R program.

A They could be.

Q Mr. Short, wasn't it your sworn testimony in your deposition that in all your years at State Farm you've never seen a claim settled by State Farm at less than its full fair value?

A I believe that in all my time at State Farm there's never been an instance of a claim that I've handled or that I've supervised that I've seen a settlement for less than what is fair value.

Q Okay. Isn't it true, Mr. Short, that State Farm uses forcing people to trial as a device to reduce average pay per claim?

A That's absolutely incorrect.

Q This is a general claims memo, it's number 428. General claims memos come right out of the home office, don't they?

[144] A They do.

Q And you know who Mr. Macherle is?

A I'm familiar with Mr. Macherle, yes.

Q In fact, we had a poster of him here a little earlier. He was the top man in the company over claims when this was written, was he not?

A It says he was the claim vice president.

Q All right, and I want to refer you to, first of all, this column, average indemnity payment. Isn't that average pay per claim?

A That could probably be, yeah, the same thing.

Q And then it says down here, "The progress made last year in stemming our indemnity payment increase by trying more lawsuits, unfortunately, was completely wiped out this year, as we increased our average indemnity payment by nearly $700 and tried only 17 percent of the lawsuits that we closed. As a result we won 90 percent of the cases that we tried. There are a number of divisions who are able to try 30 percent or better and still post impressive win percentages."

First of all, when win is defined in this setting, it doesn't mean the jury ruled in favor of State Farm on these percentages, right?

A What that means is that the jury decided that what we had offered prior to the lawsuit was more than [145] what they determined the case to be worth. So their verdict was less than what we had tried to resolve it before the lawsuit was taken through the trial phase.

Q Well, that's not necessarily true, is it?

A That's absolutely true.

Q The offer could have been made the day before trial, right? And you'd still count it as a win if it was less than the verdict?

A As a case develops, offers often happen throughout the course of the negotiations. So in a case, yeah, maybe it happened the day before trial, but in most cases not.

What that says is that the jury found, in 90 percent of the cases, we had offered more than what they felt the verdict was, or the case was worth. I don't know how else you'd define a win.

Q What I'm trying to point out, though, in these percentages, the jury didn't say State Farm wins. This is how State Farm defines win?

A I think the jury said that. How else could you explain that? If we had offered $5,000 before a case was tried, and the jury came back and said it was $4,000, isn't that a win?

Q Well, I'm simply trying to get the semantics, the words right.

[146] A I think it says the jury said we won the case.

Q In many of these cases the jury would say, would rule against State Farm, but they would award an amount less than State Farm's offer?

A Those were on cases where State Farm had, like we do in all cases, we'd stepped up and said, "We owe something, here's what we think we owe, we're willing to settle it, let's do it."

And the other side said, "No, we want more than that," and they tried the case.

And the jury came back and said, "Hey, State Farm, you probably offered more than what it's worth, here's what it's worth."

Q Let me get back to the point I'm making. Isn't it clear in this memo that State Farm, out of the home office, is saying trying more lawsuits is a good way to reduce average pay per claim?

A I obviously -- Like I just described, if we're paying more on cases than what the juries say they're worth, and that's what the juries were telling us in the cases, 90 percent of the time they said, "You guys are paying too much," then they'll probably affect our indemnity costs if we don't pay all those claims just to avoid the trial situation.

[147] Which, if we do pay them, encourages more lawsuits and more attorneys to file more suits against us. It's only an attempt to manage our business, to be responsible to our policy holders and the public.

Q So whatever the jury says you owe, you pay. That's what you consider to be the ultimate test of what you owe.

A If a case is tried, a jury comes back and makes a finding and says, X-dollars, and that's what it says. The majority of cases. Over 98 percent of our cases are never tried. We settle them all. We try very few. But in those few we try they tell us, "You're offering too much."

Q Going back to these 222 cases, doesn't that show that State Farm doesn't pay what juries award? That this shows that even after the jury makes the awards, State Farm tries to beat the people down?

A I don't think that says that at all. I need to look at that again. Does it refer to bad faith cases?

Q It refers to excess liability cases.

A Could I read it again to try to attempt to answer your question? Now, which paragraph or sentence are we talking about?

Q Well, the analysis. It talks about the [148] different cases. "We tried forty-five of these cases. Through trial, even though the prognosis was ordinarily not very good, we were able to win thirty-five of them, while losing ten. The potential of the exposure of these forty-five cases was slightly over three million. In the ten cases we lost, the judgments totaled slightly over 250. We have twelve cases on appeal. We received verdicts in seven of these, we lost the other five, and the judgments are slightly over $300,000. We hope to reverse several of these.

"In addition, we closed seventy-two other claims with excess exposure of $6.8 million without paying a dollar of excess payments. These fell into three groups. We appealed and reversed the tort judgment, we got a complete release by making payment within the policy limits --" So number 2, there, is where you're paying less than the jury said you owed, right?

A Number 2 says --

Q It's an excess verdict, but you settled for less than the verdict.

A Well, if it was settled for less than the verdict, there must have been some type of error or something, or the other party wouldn't have settled for less.

[149] Q Excuse me, I may be misinterpreting this. This doesn't say verdict. But it's seventy-two claims with excess exposure?

A It's hard to interpret this correctly without having read the whole manual.

Q And the third thing is, "We stood firm and the plaintiff's lawyer abandoned the claim. We settled seventy-eight other claims with excess exposure 3.7 million to 1.2 million, or thirty cents on the dollar"?

A I think, in answering your questions, what it says is, up at the top it says we won thirty-five out of forty-five cases. That says the exact same thing as I just said. The juries tell us that we paid too much.

Now, sometimes we lose one. I mean sometimes our judgment is wrong, we're only human, we can't be right a hundred percent of the time. But that tells us that thirty-five out of forty-five, we called right again.

Q Well, ten --

A And it goes on that some of those were dismissed or whatever. It just says that all lawsuits that are filed are not meritorious lawsuits. Some of them are brought when they shouldn't be brought.

Q Losing ten out of forty-five is not 98 percent, is it?

[150] A It's not, but it's substantially above 50 percent, is it not?

Q Let me move on, we're getting side tracked, here.

A We're just trying to exercise our best judgment, and we're not perfect.

Q But you've never, ever paid less than full fair value.

A I can honestly sit here and tell you we never pay less than fair value.

Q Now, didn't you have -- It is true that State Farm was encouraging, from the prior transparency, forcing people to try to reduce average pay per claim?

A I'm sorry?

Q Let me move on.

A We're forcing -- That's never anything we've done, force people to trial. I think the statistics will show you that we don't. We try very few cases. Less than 2 percent of the cases are tried that we handle. We handle hundreds of thousands of claims in this company a year, and we settle 98.6 percent or something of those. We're not in the business of going to trial.

Q You had a goal in your '95 PP&R, or excuse me, your '92 PP&R, to try at least five cases, didn't [151] you?

A I did. That was a reflection as to what I talked about earlier, of the claims that we sometimes paid off to avoid the legal expenses. We figured out that, in the long run, if you pay those off every time, the attorneys just keep coming back and saying, "I know I don't have a claim, but you pay me this or you're going to have to defend it."

We've realized that, in the long run, we've got to not pay those, so that if those cases are tried, and the plaintiff attorney loses them, it discourages him from keep coming back and holding us up and saying, "Pay me or I'll take you to court." And that's what that goal relates to. That's what we're doing today.

Q Your goal says, "Increase the number of lawsuits settled by trial to five."

A Exactly, and I just told you what that means.

Q It doesn't say anything about frivolous lawsuits, does it?

A Well, you can't put down every word of everything on something like that. I can tell you what that goal intended for me,

and the purpose, and the way we handle business and what I do, and that's exactly what it means. I'll tell you, I was paying claims that shouldn't have been paid.

[152] Q Okay. At State Farm you're required to give so many speeches a year to promote the public image of State Farm, aren't you?

A No, that's not true. You -- Giving speeches is a voluntary thing. State Farm does encourage us to be involved in educating the public in insurance issues.

We belong to, some of us, to a group called the Western Insurance Information Services. It's just a group that goes out and tries to educate the public on any type of insurance-related issue they might want to talk about. Preventing home burglaries, any one of a number of things. We talked, I talked to a lot of driver's education classes.

Q Mr. Short, do you have in mind the question you were asked?

A I do. You asked me about speeches, and that's what I'm telling you.

Q I asked if you're required to give speeches.

A We are not, they're voluntary.

Q They're on your PP&Rs every year?

A I create my PP&R, and I say on there I want to give some speeches. That's a voluntary.

Q And that's something that State Farm encourages?

A State Farm encourages the public to be [153] informed and knowledgeable of the insurance issues in the industry, you bet.

Q You also are required to be politically active in supporting State Farm's political positions; isn't that true?

A Absolutely not, again. My political convictions and what I do in those arenas are personally something I do, voluntarily.

They encourage us, if we're so inclined, to get involved, and there are issues that we believe in and relate to that we should be involved.

Q All right, let me ask you, from your PP&R for 1995, one of your goals. "I will participate in any legislative call to action campaign." That's a State Farm campaign, isn't it?

A That's a program that State Farm has, yes.

Q "I will participate in any legislative call to action campaign, contacting my representative and/or senator as needed."

A Those are at my discretion. That is my PP&R, I volunteered to be politically active and to pursue those things. That doesn't require me to take anything that would be adverse to what I would believe to be honest, true, correct, or anything. There's nothing wrong with being involved.

[154] Q I'm not saying there is. I'm simply pointing out State Farm, through its people, is politically active.

A Individuals are politically active.

Q Now, Mr. Short, you sat through the entire trial last October and November?

A I did.

Q You heard all the evidence laid out at that trial.

A I heard all the evidence that was given at the trial, yes.

Q And in your deposition taken just a short while ago, you testified that you'd not seen anything in State Farm's conduct relating to the Campbells that violated State Farm's guidelines or policies. Isn't that true?

A That is true, I have not seen anything that violated anything.

Q You would be proud to have State Farm treat any insured the way they've treated the Campbells.

A I'm proud the way State Farm treats everybody. State Farm believed in Mr. Campbell, when the underlying case was tried --

MR. CHRISTENSEN: That's all right, you've answered my question. Thank you.

[155] * * *

CROSS EXAMINATION BY MR. BELNAP:

* * *

[158] * * *

Q Okay. In the document that's been referred to as the Excess Liability Handbook, can you see this document as to whether or not in this Exhibit 21 is contained operation guides, or as you called it, auto manual references?

A The operation guide's a fire manual.

Q Does it say State Farm Fire and Casualty at the top?

A It does.

Q The portions that Mr. Christensen has been reading to you from, is that a portion of a talk that was given some time before 1970, according to the footnotes, by a Mr. Hume that's talking about Ohio law and Ohio courts, and the experience?

[159] A Yes, it appears that's what it is.

Q Okay. In the training that you've received when you were trained by the fire company, was Exhibit 21 ever used by any of the instructors, or referred to by any of the instructors?

A I've never seen it or heard of it until the course of this litigation right here.

Q Did you ever use that document, or refer to that document when you were employed by the auto company in any capacity?

A I've never used the document. I've never read the document. I've thumbed through it as a matter of it's an exhibit, here, but I haven't referred to it or read it.

* * *

[160] * * *

Q Mr. Short, as a management person, is it part of your job to have an awareness of the costs of doing business?

A I believe it is. I believe it's probably every employee's duty to have an awareness of costs.

Q And as part of having an awareness of costs, Mr. Short, do you receive reports from time to time that talk about various costs?

A Yeah, I receive reports that talk about costs, indemnity payments, expense costs.

Q Let me talk about some of the costs that may be mentioned. On the reports, are there costs that talk about allocated adjustment expenses?

A Yes, there's -- We refer to quite often allocated loss adjustment expenses.

Q And is that a cost that can be attributed to a particular claim file or case?

[161] A Yes, that would be a cost that's specific to one file or accident, it's not shared by any of the other files, such as an overhead expense or something.

Q For instance, if you have to hire an attorney, or an investigator, or you have to pay a doctor to get medical records or things like that, can that be attributed, then, to that particular case?

A That's an allocated loss adjustment expense to us.

Q Is that one of the expenses that you're asked, as a manager, to be aware of whether or not you're properly looking at those expenses in an appropriate way?

A Yes, we're asked to look at those on an ongoing basis, we try to watch those.

Q Okay, let's talk about unallocated expenses. Are those what we might refer to as, if we were to make it simple to me, in a family setting, the light, heat, power, other overhead expenses of running a home or a business, that just generally service everybody?

A Yes, those things that need to be shared by all the claims that we handle are unallocated.

Q Now, in addition to that, you have staff, secretarial, support staff, equipment, those kind of things?

[162] A Yes, we have all the normal business expenses.

Q All right. And then something that's been talked a lot about in this case is indemnity expenses.

A Yes, that's a big part of what we do, is indemnity expense.

Q Now, as a manager, Mr. Short, I want to talk to you about the people that you work with, the people that are meeting with people every day of the week and settling claims in terms of indemnity expenses.

Do you -- Let me rephrase that. Have you ever seen a report at State Farm that tracks indemnity expenses, the average of those, by a particular claim representative?

A No, the only way I can tell what a claim rep's doing is by looking at each individual file. We handle them on their own merits, on their own basis. The claim rep doesn't have an average paid cost, or an average paid payment of any kind.

Q Just for ease of quickness, Mr. Short, we have a divisional claims superintendent, we have a claim superintendent, which is your unit that you've talked to the jury about; is that right?

A That's right.

Q And this, at this level there may be several [163] adjusters that are meeting with the public and settling claims with the public, or directly with their attorneys; is that right?

A Yes.

Q Now, with respect to records that are kept, is there any record kept as to any one of these individuals, as to what their average paid cost is?

A That's never been identified or tracked.

Q Now, when the jury is shown -- And let me --

MR. BELNAP: Counsel, may I borrow that 1985 general claims memo you had up here? From Mr. Macherle?

Q (BY MR. BELNAP) When the jury is talked to about average paid costs, Mr. Short, in this column, have those ever been compiled, to your experience, on anything other than a total unit basis?

A No, I've seen them on a unit basis, but I've never seen them in any form or report in any other way, other than that.

Q Now, looking at these statistics, Mr. Short, that the plaintiffs put up here, does it indicate to you -- and I'm not trying to be silly -- but does it indicate to you that State Farm, if there's an effort to cheat people, has been successful in reducing those numbers, at least between 1965 and 1984, the span of this document?

[164] MR. CHRISTENSEN: Well, I'm going to object to this witness drawing conclusions as to whether this does or does not show cheating people. I don't think there's any foundation laid for that.

MR. BELNAP: Your Honor, this was gone into by plaintiff. I think he's entitled to answer the question that I posed to him.

MR. CHRISTENSEN: Well, it's the opinion he's asking to draw from the numbers that I'm objecting to.

THE COURT: Sustained.

Q (BY MR. BELNAP) Mr. Short, can you tell us if there's been an annual increase in each of those years in average paid costs on the indemnity payments?

A I think I've looked at each number. Yes, it shows that each year the indemnity cost has gone up.

* * *

[166] Q (BY MR. BELNAP) Mr. Short, I want to ask you about an interrogatory answer that you signed in 1994. And first of all, to lay some groundwork, or perspective on this, are you aware of whether or not a list of cases was provided to the plaintiffs in this case summarizing the name of any excess verdict, the court that it was in, the ultimate outcome of the case, and that other information?

A Yes, we made such a list and provided it to them.

Q And was the case that was handled in your office in 1993 part of that list?

A Yes, it's on the list.

Q And was that list provided to the plaintiff's attorneys before the trial of this case?

A Yes, it was.

Q Mr. Short, in interrogatory number 3 that was shown to you, it asks you for each third-party claim in Utah since 1980 that resulted in an excess verdict. And if I could stand here by you for a moment, you indicated that they can, that you checked with claims management, and they cannot recall any other excess verdicts during the 1980s; is that what it says?

A That's what it says.

Q And then after filing this document [167] pertaining to the 1980s, there was then a list provided to counsel that we just referred to; is that right?

A That's right.

Q And with respect to that case that was involved in your office in 1993, did -- Can you tell the jury how you handled that case in terms of resolving it, Mr. Short?

MR. CHRISTENSEN: I'm going to object to this, Your Honor. It's going beyond the scope, and they have not produced the file, they've not allowed us to see it, so that we have an opportunity for fair cross examination on it. And where they're withholding the file, that's a second ground we'd object on.

MR. BELNAP: Your Honor, we produced exactly what the interrogatories asked for, and this court asked us to do in January and March. And to say that is not correct, and not proper.

We produced a list, we produced the summary, we produced all of that information. And they've had it, and they've had it pursuant, not only to the interrogatories, now, that have asked for that, but pursuant to what you asked us in those hearings to produce, and we've produced it, and I'd like to proceed. He was asked about that 1993 case on direct examination.

MR. HUMPHERYS: Your Honor, subsequent to the [168] time they produced that list, after that, we then requested the claim files, and they have refused to give them to us.

MR. BELNAP: That is not true.

MR. HUMPHERYS: That is the seventh and eighth set of request for production of documents, Paul. You're misrepresenting it.

MR. BELNAP: You're misrepresenting it.

(Side bar conference held out of the hearing of the Jury.)

Q (BY MR. BELNAP) How did you handle that case, Mr. Short? Can you tell the jury, please?

A After the verdict was returned and it was in an amount beyond the policy limit, we sat down with the counsel who represented the insured, reviewed the case, looked to see if there were any grounds, appropriate grounds for appeal, a motion for new trial, or whatever.

Then we immediately, I prepared a claim committee report, submitted that to the divisional claims superintendent, to the corporate office, with the recommendation that if there were any grounds for appeal that we'd file a supersedeas bond to try and resolve the matter by paying the policy limits, and if not we ended up actually paying the full amount, a compromised amount of the judgment.

[169] Q And then when general claims responded to that claim committee, what were you directed to do, Mr. Short?

A I was directed to resolve that claim by settling it with payment in the amount of the verdict and interest and costs up to that amount.

Q And did the case get resolved?

A The case was resolved, actually, before any judgment was entered. It was resolved. The verdict had come back, but it was resolved for something less than the verdict, and I don't believe we paid any interest.

Q Within how many days of when the trial was finished was that case concluded, Mr. Short?

A I believe it was about thirty, thirty-five days.

Q Mr. Short, have you ever decided, or made a decision, either on a case that you've handled, or that one of your adjusters that has come to you for authority or advice on a case, have you ever decided not to settle a case because you were concerned about average paid costs of your unit?

A Absolutely not. We sat down, and we often talked about how to handle each case on its merits, each case is individual, specific. I mean even though you have some things that may look similar, you have [170] different parties involved, different susceptibilities to injury and all those things. You can't group them in any way. You have to figure each one on its own.

Q Have you ever decided, yourself, on a case that you've handled, or in sitting down with any of your adjusters to review a case to talk about settlement range, that you would reduce the payment on a particular case because you were concerned about average paid costs?

A Average paid cost is not something I've ever talked with any of the claim representatives I supervise, it has never been indicated to me that it should be considered in evaluating any claim. Each claim is evaluated on its own merits. It's the only way to do it.

Q You were talked to about the Buried Alive video tape. Is that a video tape, Mr. Short, that was produced commercially by some entity that was then made for distribution to whoever wanted to buy it, if you know?

A I believe it is a video that we purchased. It's not a State Farm-produced video.

Q You were talked to about the PP&R booklet in 1979, and it's an exhibit in one of the other documents, and Mr. Christensen showed that to you. Do you recall [171] that document?

A I recall seeing it here today.

Q Now, are you aware whether or not, Mr. Short, since the '79 document came out, if it has been superseded by two

other documents, one, first of all, in '87, and then the second time in 1992?

A I believe, like most of our things, it has evolved. One document replaces another, as we learn new and better ways, and different ways we need to do things. These are obsoleted and outdated.

Q Mr. Short, have you seen, in connection with documents produced in this case -- and there's a photocopy of these that are in the exhibits -- this being the '87 book, and then the 1992 PP&R book?

A I've seen those.

Q Does the 1992 PP&R book indicate that a claim representative should have in their PP&R a reduction of average paid costs?

A I don't recall seeing that in there anywhere. I'm sure it's not.

Q I'll represent to you that it's not, Mr. Short.

MR. CHRISTENSEN: I'm going to object to this as leading.

MR. BELNAP: I'll rephrase it, Your Honor. [172] In fact, I'll withdraw it and move on.

Q (BY MR. BELNAP) In the interest of time, Mr. Short, I can show you the page in the book where it uses as an example -- Let me just show you this page. Does this page indicate whether or not a claim representative should be having a goal like that?

A It says those goals are inappropriate.

Q And have the claims representatives, the adjusters that you have supervised, had goals like that, that you have worked with them on in their PP&Rs?

A They have not.

* * *

[195] * * *

Q (BY MR. BELNAP) Mr. Short, I'm going to show you what's going to be marked as Exhibit 136, and ask you if you can identify -- this is a multi-paged document -- if you can identify what that exhibit is?

A It's a photocopy of our auto insurance policy.

Q Does it have any other documents attached to the end of it, Mr. Short?

A Yes, there are several brochures or documents that we use in the course of our auto claim handling.

MR. BELNAP: I'd move for the admission of this exhibit.

THE COURT: Any objection?

MR. CHRISTENSEN: No objection. Could we [196] have a foundation simply, is this the current policy, or is this from '81, or what?

THE WITNESS: It would be the current policy form.

MR. CHRISTENSEN: Thank you, no objection.

THE COURT: Received.

(WHEREUPON Exhibit Number 136 was received into evidence.)

Q (BY MR. BELNAP) Would the provisions, Mr. Short, on the payment of physical damages coverages, in terms of paying to repair with like kind and quality, be the same? Has that changed over the years, say, in the last few years? If you know?

A Well, I really don't know. Occasional, because of requirements from the state to modify a policy or whatever, they're changed. I wouldn't, couldn't specifically say.

Q All right. Attached to the back of this document are several things that I think you indicated were brochures; is that the words you used?

A Yes.

Q Could you turn to the one entitled "Quality Replacement Parts"? Could you just show that to the jury? Is that a document that you would fold up into a three-part brochure?

[197] A Yeah, it's kind of like a little folder, if you would.

Q Okay. And on the back of it, on the back of that document, could you show the jury the back of it?

A (Indicating.)

Q Is there a place to write the claim number, the vehicle owner, the date, et cetera?

A Yes.

Q Is that document given to insureds and other people that come in to have their vehicles replaced, if there are replacement parts used?

A It's given to everyone who has a replacement part specified on their repair estimate. We give them a copy of this after explaining it to them.

Q Okay. We'll get into this a little further tomorrow. Is there also a brochure on using recycled parts?

A Yes, it's the same type of brochure.

Q Okay. Is this information, if you could turn two more pages, over to the document non-original equipment replacement information? Do you see that?

A Yes.

Q When a non-OEM part is used in an estimate, is that also indicated on the estimate?

A Our estimates are, most of them are computer [198] printed now, or generated after we put the info in, the information in, and any non-original equipment part would have an asterisk by it to be identified as a non-original equipment part.

Q And does this language that "this estimate's been prepared on the use of automobile parts not made by the original manufacturer" contained on the estimate?

A I can't remember if it's contained on the actual estimate. This form is attached to the estimate.

Q All right. So the form, it's either on the estimate, or the form is attached to it?

A Yes.

* * *

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CROSS EXAMINATION BY MR. BELNAP:

* * *

[14] * * *

Q (BY MR. BELNAP) Can you tell the jury what Exhibit 138-D is, Mr. Short?

A It's what we call a PP&R form for claim representatives.

Q Okay. And if I could just --

MR. BELNAP: Can I publish a copy of this to the jury, Your Honor, while I ask the witness some questions?

THE COURT: You may.

Q (BY MR. BELNAP) On the first page of this, Mr. Short, is there a place where you -- excuse me, I'll try to move along as I let all of you see it -- but is there a place where the employee's name goes, and their job title?

[15] A Yes.

Q And the evaluation period that this covers?

A Yes, the basic information for all that.

Q Okay. Is there a place where it shows that the employee signs the form after meeting with his or her supervisor?

A Yes, the employee signs it, the supervisor.

Q Okay. And does the form have a quality mission statement on it for the company?

A It does.

Q Can you read that for the jury?

A "I am personally accountable for providing prompt, accurate, friendly, and cost-effective service to our customers."

Q Okay. And then does the form go on to provide an evaluation of fifty-six job categories that an employee is, meets with you periodically to review their performance?

A It does.

Q Now, this form is for -- The jury saw one of your PP&Rs yesterday, I think, and this form looks different than a manager's PP&R, does it not?

A It does.

Q This is for -- Is this for a claim adjuster at this level?

[16] A Yes, claim representatives.

Q Mr. Short, just to give the jury an idea of the things that you review with your employees, let me just tick some of them off quickly, if you could follow with me?

A Okay.

Q "Makes prompt contact with people; identifies and locates witnesses; secures statements, photos, scene investigations; has initiative; recognizes coverage questions; obtains and analyzes needed reports, experts, damages; investigates; identifies essential evidence; analyzes legal issues; evaluates witnesses; demonstrates knowledge and use of medical references; considers loss facts; initiates negotiations; demonstrates effective negotiating technique; utilizes periodic payment settlement offers; demonstrates good judgment; uses alternative dispute resolution."

What does that mean, Mr. Short, that number 24?

A Alternative dispute resolution is, the two basic things that are involved in that would be either a mediation of an issue that's in dispute, or an arbitration proceeding. It's an alternative to try to resolve something, rather than going through the complete legal process. So it's an alternative [17] that's --

Q Is alternative dispute resolution something that State Farm has expressed considerable interest in, in the last few years, in emphasizing in its claims?

A Yes. We look to use, we call it ADR, alternative dispute resolution, in any appropriate case, because it's quicker and resolves the issues for all the parties much quicker. Obviously I think the court likes it, because it clears the calendars and lets them do the things that they need to do.

Q Okay, continuing, "Demonstrates knowledge of and compliance with state handling regulations; recommends IMEs, billing audits when appropriate." Is that a review by other doctors? Is that what that means?

A Yes, that's a review.

Q "Uses external reporting agencies; use customized claims service when appropriate; continues involvement in the file after suit; exhibits knowledge and follows company claim procedures; submits timely reports and accurate, legible and accurate reports; expresses ideas in clear and concise manner; tailors comprehensiveness of reports; actively and legibly documents activity logs; verifies and documents proper ownership and value; applies knowledge of automobile [18] repair; considers betterment, depreciation, appearance allowance and use of like materials when appropriate."

Now, is that what you talked about yesterday, Mr. Short?

A Yes, all those.

Q Okay. "Utilizes speciality shops, discounts, and State Farm replacement services when possible; uses computer-assisted estimating; applies auto damage claim policy; follows up with subrogation; properly evaluates loss of use; manages time; accepts supervisory directions and suggestions; exhibits positive behavior and teamwork; develops and maintains good public relations; projects professional image; maintains company equipment in good condition; develops and maintains good agency relation; promptly and effectively resolves complaints; uses available automation tools when appropriate; and provides good service."

Have I basically covered those, Mr. Short?

A I think that's all of them.

Q Okay. On the first page of this form, can you read to the jury where I'm pointing to, Mr. Short, right here?

A Okay.

Q What that says?

A "Reduction of claim indemnity costs, [19] pendings, or expenses should not be included as a goal, measure of job performance, or as a condition for promotion or merit pay increase."

Q Is that what you testified to yesterday, Mr. Short, when you talked about average paid costs, never in your experience as a superintendent, having been discussed or emphasized with your claim representatives?

A Yes. What I was trying to say is, those are not things that the claim representatives look at, and they're not judged on those for their performance of their duty on any claim, on their performance evaluations, in any way.

* * *

[20] * * *

Q (BY MR. BELNAP) This is an affidavit of Grant Cutler that was referred to yesterday dated 21 May, 1986, talking about the Excess Liability Handbook; is that correct?

A Yes.

Q What does he indicate on paragraph 4 of that affidavit as a claims superintendent -- Let me just lay a little foundation. Do you know Mr. Cutler, Mr. Short?

A Yes, I do.

[21] Q As of 1986, when this affidavit was signed, had he worked for State Farm Mutual Automobile Insurance Company for something in excess of twenty or thirty years?

A Yes. I know he'd been a long-time claim superintendent before he became claim counsel for us here locally.

Q What does he say in paragraph 4 of this affidavit?

A "To my knowledge, the manual has never been used in Utah by any claim superintendent or claim handler."

Q Now, Mr. Short, let me represent to you that this affidavit comes from the Ray Summers versus State Farm case, and I'll represent to you that in that case, Mr. Summers' attorneys submitted an interrogatory asking the following questions.

"Answer the following questions regarding the Excess Liability Handbook." And this was an interrogatory addressed to State Farm Mutual Automobile Insurance Company, who was the defendant that Mr. Summers sued, among the other personal defendants; isn't that true?

A Yes.

Q "In what states of the U.S. was the book [22] disseminated? Who was the author of it? Were there any classes taught by the company or its representatives using the handbook? And have the following persons had access to the handbook?"

And then it starts a list. Bill Brown, and he was the divisional at the time of the Campbell case, was he not?

A Yes, he was.

Q Okay, continuing with this list, Mr. Noxon, Mr. McGlinn, and then others. Let me refer you to the answer, Mr. Short. Can you just read that, please? Are you able to see that from where you are?

A I think I can see that. "The Excess Liability Handbook was made available to divisional claims superintendents in the State Farm Fire and Casualty Company in those states in which State Farm operates.

"The handbook was authored by fire general claims. State Farm is unable to determine what classes, if any, may have been taught by the company or its representatives using the handbook.

"To the defendant's knowledge, none of the persons listed have ever used or possessed the handbook. To defendant's knowledge, management personnel in the state of Utah were unaware of the existence of the [23] manual, and the manual was never used by any claims superintendent or claim handler in the state of Utah.

"Defendant is not aware of any of those persons, if any, in the Mountain States Region, who may have had access to the handbook, since no records would exist which would detail this information."

Q Now, Mr. Short, these interrogatories were answered in October of 1986. And do you have an understanding when this, what year the lawsuit in this case that we're on right now was filed? Do you recall if it was in '89? I'll represent to you it was.

A Yeah, it was in '89.

Q Okay. So these answers were done three years before this case.

A Yes.

* * *

[29] * * *

Q One of the manuals that was produced to the plaintiffs was a claims superintendent manual. Do you recall that?

A Yes.

Q Has that manual been obsoleted?

A Yes, it was obsoleted.

Q What is the current manual called?

A It was replaced by a manual called the claim supervision manual.

Q And is that a manual that you currently use in your work?

[30] A Yes, I think all management people have that.

Q Okay. On the, in that manual does it state what the company's philosophy is in terms of claims management?

A Yes, there's a page that gives a preface about the manual, if you would.

Q Can you indicate to the jury in your own words your understanding of what you are trained as a manager of State Farm, in terms of the philosophy of State Farm?

A The philosophy of State Farm, I guess, starts with the slogan, "Be a good neighbor." We're taught to be honest and fair, to look at things objectively, to represent --

The company philosophy, I guess I can best say it, is when I first started State Farm, I'd been with Transamerica. I came in, the first day I walked in, I was told, "Look for ways to pay claims."

And that's the philosophy that State Farm has always had. Look at the policies, make sure we give the benefit of the doubt to people. And I think that's what we've always done. That's the way I've always handled it.

* * *

[31] * * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

* * *

Q There's been some discussion, quite a bit of discussion about the production of the manuals that we've requested, and I'm sure some of that may be confusing to the jury. And I spent a few minutes sitting here this morning, trying to figure out how to clarify that.

I'm sorry I don't have transparencies, but let me see if I can approach it this way. I have here a copy of the Excess Liability Handbook, which you're aware is a document that we think's important in this case.

[32] A Yes.

Q And it's State Farm Auto's position that this has nothing to do with the auto company. Do you understand that?

A I think that's an accurate statement.

Q Now, I have the manuals which you produced to us back in '89, and part of those manuals deals with Article 14 of the claims superintendent's manual of the auto company. Are you with me so far?

A Yes.

Q Okay. And if we look at Article 14, it's entitled, "Defense attorneys and supervision of BI litigation."

A Yes.

Q And it looks like the copy you provided to us in '89 was revised in June of '83.

A That's -- Yes, that's what it indicates.

Q So this would have been the current version in '89, but it would have been written in June of '83.

A Yes.

Q And there's no question that this is an auto company document, right?

A That came from the claim superintendent's manual that the auto company used up until, I believe it was obsoleted in '90, yes.

[33] Q Okay. I'm going to have you look at that, then. I'm going to look at part 5 of the Excess Liability Handbook. And this handbook was 1972. Does that sound right?

A Yeah, I believe it was written in '72.

Q What I'd like to do with you --

A Obsoleted in '79.

Q Well, there's some question about that, because there's another obsolete memo in '86. Okay, you're looking at your copy of the auto manual, Article 14, right?

A Yes.

Q And I've got part 5 of the Excess Liability Handbook. And I'm going to show that to you so you know what I'm looking at.

All right, now, I want to see if you can understand why this may be significant. Would you read the title? First of all, let me read the title, here, in the Excess Liability Handbook, part 5. It reads, "Company attorneys and supervision of BI litigation." And how does yours read?

A The title, "Defense attorneys and supervision of BI litigation."

Q So that the word, this says "company attorneys," that says "defense attorneys." Otherwise [34] they're identical? Do you want to see it again?

A Close. I didn't remember if that said BI litigation or not. Supervision of BI litigation. Yes.

Q Okay. Then under that, do you see the word "Introduction"?

A I do.

Q And what's the first comment under introduction?

A Caption entitled, "Lawsuits can be won by the defendant."

Q Okay, and let me read this. It says, "Lawsuits can be won by the defendant." Now, let's move down to the next segment. Do you see down the page it says, "Successful defense of BI litigation involves teamwork between attorney, adjuster, and claims superintendent"?

A That's caption B, here.

Q Caption B. And I'll represent this is caption B. So that's identical, isn't it?

A It sounded to be so.

Q Let me read the first subparagraph under that. Number one. "Before suit, the direct handling of the case is by the adjuster." Would you read what your manual says, please?

A "Before suit the direct handling of the case [35] is by the claim representative."

Q At some point did State Farm quit calling people "adjusters" and call them "claim representatives"?

A I think they're still called both things.

Q So these mean the same thing?

A I think so.

Q All right, I'm going to read you number 2. "With commencement of suit, the claims superintendent and trial attorney become active direct participants in the case." What does yours read, please?

A "With commencement of suit, the claims superintendent and trial attorney become active direct participants in the case."

Q All right. Under that subparagraph A, "Claims superintendent, attorney, and adjuster communicate with each other directly." How does yours read?

A "Claims superintendent, attorney, and claim representative communicate with each other directly."

Q And then B, "Claim superintendent may confer with attorney." How does yours read?

A "Claim superintendent may confer with attorney."

Q And then C, "Claims superintendent may [36] participate in negotiation." How does yours read?

A "Claims superintendent may participate in negotiations."

Q D, "Claims superintendent may attend trial." How does your D read?

A "Claims superintendent may attend trial."

Q Then do you have, under that, a 3, which reads, "Field adjuster remains active and responsible in the case." How does yours read?

A "Claim representative remains active and responsible in the case."

Q All right. And I'll represent if we finished the page we would see a similar pattern.

Now, I'm going to ask you to turn to a part of this, and I think I've marked it so it's easier to find. Do you see here in yours, it says, "Attorney's file review and opinion"?

A Yes.

Q And then over on the next page, and this is Bates stamp number 211, it says, "Contents of file review and opinion." Do you see that?

A I see that, yes.

Q Okay. And you understand that one of the issues we're raising in this case is what instructions State Farm gives defense attorneys as to what they [37] should put in a file, or what they should keep out of the file. Do you understand we've been raising that issue?

A I understand you just said that, sure.

Q Okay. You've got a heading that says, "Contents of the file review and opinion"?

A Yes, that's a subcaption.

Q Okay. I'm going to read one from the Excess Liability Handbook. One, "Summary and evaluation of evidence." How does yours read?

A "Summary and evaluation of evidence."

Q Two, "Summary of the law." Would you read yours, please?

A "Summary of the law."

Q Under that subparagraph A?

A You want me to read that?

Q Let me read mine first.

A "Review of the issues of law."

Q Okay, mine says, "Review of the issues of law." How does yours read?

A Oh, "Review of the issues of law."

Q And B, "Citations and opinions on these questions"?

A "Citations and opinion on these questions."

Q And C, "Opinions as to application of the law [38] as shown by preponderance of the evidence." How does yours read?

A "Opinion as to application of law to the facts as shown by preponderance of the evidence."

Q Now, is your number 3, does it read, "Recommendations as to strategy and preparations"?

A It does.

Q And does A read, "Depositions and discovery procedure"?

A It does.

Q And B, "Surveillance and motion pictures of plaintiff."

A It does.

Q And C reads, "Photos, plats, models, or visual aids for trial"?

A Yes.

Q And D reads, "Independent medical examination"?

A Yes.

Q And E reads, "Experts."

The next one is a long paragraph. "Care and common sense should dictate." Is that how yours starts out?

A It does.

Q Now, 4, does 4 read, "Comment on special [39] trial factors"?

A Yes.

Q And A under that, "Parties and witnesses"?

A Yes.

Q B, "Plaintiff's attorneys"?

A Yes.

Q C, "Jury conditions"?

A Yes.

Q D, "Condition of trial calendar"?

A Yes.

Q Okay, now we're getting to one that we believe is of significance. Five, here, reads -- And again, we're talking about what the manual says should be in the attorney's opinion on the case, right? In this case it would be Mr. Bennett. Do you understand that's what this manual's talking about?

A The manual's about working with defense counsel, yes.

Q Okay, my number 5 reads, "Estimate as to verdict if plaintiff wins." And then in parentheses, "Not in writing if policy limits are involved."

Your June, '83 version doesn't have that, does it?

A It just says, "Opinion as to probabilities of successful defense."

[40] Q And I'll represent to you that's 6, here. "Opinion as to probability of successful defense," and then let me read you my number 7. Let me show it to you so you can see I'm not fabricating this. "Opinion as to settlement value, parentheses, not in writing if possible limits could be involved."

A That's what it says.

Q In your June, '83, it doesn't have that; is that correct?

A That's correct.

Q And that would be an improper instruction to a defense attorney, wouldn't it, to not provide written opinions as to value or possible verdict, just because it might be an excess liability case?

A Think it's a good idea to have his opinion in the file. And that's the way I've always done it.

Q Now, let me ask you this. Mr. Short, can you, after we've made this comparison, see why we think that part 5 of the Excess Liability Handbook was probably patterned after a prior version of the auto manual?

A Having worked for both the fire company and auto company, I couldn't say that I would believe that that manual was used to create the other manual. The companies have distinct operating procedures. I could [41] understand --

Q Let me stop you right there. You understand that in 1972, the fire claims department was brand new. It was just getting started.

A I believe it was operating at that time. I don't know how new it was.

Q The evidence here is it started in 1970. Do you have any reason to think that's wrong?

A No.

Q Wouldn't you expect -- And by the way, the fire company is owned by the auto company, right?

A The fire company, yes, is a subsidiary, or I guess it's owned by the mutual company.

Q And Mr. Aaberg, who wrote this, or at least helped put it together, came from the auto company; isn't that true?

A I don't know that.

Q If I tell you that's the evidence, you wouldn't argue with it?

A If that's the evidence, I wouldn't.

Q Wouldn't it make sense for Mr. Aaberg, when he puts this together, to get his auto company manual that he's used for years, that was effective in 1972, and use it to write this?

A I think it makes sense. What that shows to [42] me is that possibly the auto company looked at theirs and decided that wasn't the way they wanted to do business, so they created the other document that better specifies our handling of claims and the way we do business.

Q Are you aware, and there's evidence in this case, that Mr. Macherle, who's the claims vice president for the whole company, he's over fire and auto, isn't that true? Or at least he was?

A I believe that's right.

Q Are you aware he admitted in a deposition that the predecessor for this part 5 of the Excess Liability Handbook was Article 14 of the auto handbook?

A No, I'm not aware of that.

Q That would make some sense, wouldn't it?

A I -- I don't know whether it makes sense or not. Those are two distinct documents. One for the fire company, and one for the auto company. And it shows a couple of distinct differences in the way they handled things. I think that's what that shows.

Q The version of Article 14 that you produced was the June '83 edition. You understand the Campbell accident happened in May of '81.

A Yes, those dates are correct.

Q Do you understand now why we wanted to see [43] the earlier versions of the auto manual, so that we could compare them to part 5 of the Excess Liability Handbook?

A I can understand that.

Q Okay. Now, in following up on that, Mr. Fye apparently had one manual that was a little bit earlier, I think it was late '81. I'm sorry, I've forgotten the date.

MR. HUMPHERYS: It's in evidence.

Q (BY MR. CHRISTENSEN) As I recall, and I can't be certain, as I recall, even the '81 version was like October, '81, and it wasn't the day of the Campbell accident. But it would be very helpful, would it not, to be able to see the 1972 version of the auto manual to see if it reads just like the Excess Liability Handbook part 5?

A I'm sorry, ask --

Q Do you agree it would be very helpful to be able to see the auto manual that existed at the same time this Excess Liability Handbook was written?

A To compare the two to see if they're identical or whatnot? Well, obviously, sure.

Q Sure. And as far as you know, we can't do that. As far as you know, nobody's got that manual.

A Yeah, we've produced everything we have. [44] We're left with the testimony of the people as to whether or not they ever used the manual.

Q Right. Okay. Let me move to another area. Now, you've mentioned a hearing that we had a few months ago, where you said it looked like we were asking you to produce some documents that Mr. Fye, or we already had. Do you remember that?

A Yeah, I do. I believe that's true.

Q Do you remember our explaining, in fact, we were kind of upset, that we had documents, but the reason we needed State Farm to produce them is because State Farm would not admit they were authentic?

MR. BELNAP: Your Honor, I'm going to object to that for the same reason I did yesterday. We have worked out, and with the assistance of the court and all combined, we have authenticated --

MR. CHRISTENSEN: This is a speech, this isn't an objection. And I'll explain that. I'll cover it.

THE COURT: I'll allow you to pursue it, but I'm also mindful of the objection, and let's --

MR. CHRISTENSEN: Right.

Q (BY MR. CHRISTENSEN) Just shortly before this trial began, State Farm did finally authenticate a bunch of documents we had. But that just happened just [45] before the trial started, didn't it?

MR. BELNAP: Your Honor, could we approach the bench?

THE COURT: You may.

(Side bar conference held out of the hearing of the Jury.)

Q (BY MR. CHRISTENSEN) Mr. Short, don't you remember at that hearing we were saying we've got documents but State Farm won't authenticate them, and so we need them to produce them, so that they will obviously have to say these are authentic. Do you remember discussions along those lines?

A I remember a lot of discussions. The discovery process was long and tedious. I remember that it was said, "Why don't you show us what you've got, because we're trying to find everything we can. We can't even attempt to authenticate them until we know what's there." So we asked to see them so that we could try to authenticate them, is my recollection.

Q And don't you recall that at that same hearing we explained that Mr. Humpherys had flown to California with the documents to take a deposition of the very person that had produced them in the Singh case in California, and that that witness wouldn't admit that those documents were authentic, that he was very [46] uncooperative?

A There was a discussion about different witnesses and different problems.

Q I don't want to belabor this. You remember at either that, I think it was at that hearing, lasted three days. Mr. Fye testified that he'd produced the documents something like thirty times to State Farm?

MR. BELNAP: Your Honor, this is beyond what we discussed at the bench. We've gone over this before with the court. I think it, there's an order of the court on this subject.

MR. CHRISTENSEN: Let me see if I can follow it up this way.

Q (BY MR. CHRISTENSEN) You understood we weren't playing games. We were just trying to get the evidence in a form where it could be presentable at a trial.

MR. BELNAP: Well, what this witness understands or believes about game playing or not seems to be speculation on his part.

THE COURT: I'm going to allow this. I think the point is appropriate, and I think that counsel's proceeding as I instructed.

Q (BY MR. CHRISTENSEN) Do you have my question in mind?

[47] A I do. My answer would be that I believe both sides were working to try to get the evidence, just as we were working very hard to come up with and produce the things we could find that you requested. And you wanted some things authenticated and we said, "Give them to us, let us look at them to figure out if they're State Farm documents, if they've been altered, or whatever." It was back and forth. I think both sides worked at trying to get the evidence that they felt was to be included in the case.

* * *

[50] * * *

Q Now, you were asked this on cross if this was your answers to some interrogatories, and you signed those on January 21st, '94.

A Yes.

Q And this was the one we talked about yesterday, about interrogatory 3. "To the extent not listed in the interrogatory above, for each third-party claim in Utah since 1980 that resulted

in an excess verdict, state." So did you understand the question that you were answering was, "Tell us about the excess verdicts since 1980 in Utah"?

A I understand what the question says there now. The oversight of answering that question, I [51] explained yesterday, was just a mistake. The intent has always been to answer all the questions and provide the information.

Q So you admit that's not an accurate answer to the question we asked.

A I would say that we later corrected that mistake, and provided that information to you.

Q What, over two years later?

A I don't know how much time involved, but we --

Q It was in 1996, wasn't it?

A I recall. I think it was, that that list was given to you.

Q And when you answered that in '94 you'd had your own excess verdict in your own unit in '93 --

A I had that in '93. I'm sorry, but it --

Q Just slipped your mind?

A It's just a mistake.

* * *

[52] * * *

Q Now, you pointed out in those, some documents yesterday, too, about disclosures to people who got either salvage parts -- And what's your term for those?

A It slips my mind. Recycled parts. Quality recycled parts.

Q Recycled parts. Those are relatively new documents, aren't they? I mean those weren't being used back in the eighties, were they?

A I don't know the dates on those. Those documents have, like many things, evolved over time. I can tell you that it's always been the practice that we [53] explain to people what parts are used on their car, all the settlement options, those things that those forms do.

I don't know the revision dates on them, but it's always been a policy, it's been, I think, recycled parts and replacement parts have been used for, ever since I've been in the business, seventeen years.

Q Are you aware that there have been a number of class actions filed against State Farm over their practices and policies on auto parts?

A I believe I'm aware that there was one. I don't know of any others.

Q Which one were you aware of?

A I'm not even sure what state it was in. I believe it was, I'll call it back east, Indiana, or Illinois, maybe. One of those. I'm not sure.

Q Hasn't State Farm been forced to start using some disclosure documents because of class actions against them over their practices and policies?

A I don't know anything about the class actions, what they were about, really, or what was the outcome of them. I can tell you that as long as I've been at State Farm, fifteen years, we've told people what we've put on their cars. We've made sure that we tell them that. That's the way everyone is trained. [54] They've always known.

Q You were aware that Mr. Bruce Davis has testified just the opposite in this case.

A I don't know what Mr. Davis has testified to.

Q Okay. Now, the form that you showed for PP&Rs here a few minutes ago, that's a 1995 form? I think I saw a date.

A Yes, it is. It is.

Q And there have been a number of revisions of the PP&R program and forms through the years, haven't there?

A I believe that there has been some revisions.

Q Now, the affidavit of Grant Cutler that I showed you yesterday that dealt with the Excess Liability Handbook, do you know what I'm talking about?

A I do. That's the one we looked at this morning.

Q Do you understand that the point I was trying to make with that was simply that State Farm Auto had that manual, obviously, in 1986? At least in connection with the Ray Summers case.

A I don't recall what point you're trying to make. If that's what it says, I would say that's what it says. I just, I remember that it says that no one in Utah had seen or used the book.

[55] Q Okay, well let me show that to you.

A If it says they had a copy, or we had a copy, then I'd say we had a copy.

Q Do you see Mr. Cutler in paragraph 3 saying the first time he saw it was on May 21st, '86, when Robert Burton -- That's the same attorney who helped you prepare answers to interrogatories, right?

A Mr. Burton assisted, yes.

Q If he says the first time he saw it was in May of '86, that means he saw it in May of '86, doesn't it?

A It means he saw it. I don't know if Mr. Summers had a copy, or somebody, his attorney had a copy.

Q Obviously it existed?

A Somebody had a copy of it, there, it sounds like.

Q Now, it was pointed out that this case was filed in '89. Are you aware that in the case of State Farm Mutual versus Roger Schlossberg in Maryland, a case that was decided on appeal March 1st of 1990, that the Excess Liability Handbook was an exhibit, it looks like it was Exhibit 12 to the deposition of a Mr. Comella in that case. Do you see that?

A I'm not aware of that, but I could read what [56] it says here. It doesn't say that he had the handbook.

Q It says Exhibit 12, Comella --

A That it was an exhibit? Okay.

Q So this handbook was around before '89, and State Farm Auto obviously had access to it.

A That book was obviously authored in '82, I believe the records indicate it was obsoleted in '89. Obviously it's an exhibit here, so somebody's had a copy of it.

The people who had a copy, I don't know where it came from. I can tell you that, as we searched for the records, if that's what you're asking, I looked everywhere, and we looked for everything that we had, and we provided that in the discovery process. Is that the issue?

Q Mr. Burton helped you search?

A Mr. Burton assisted in, with the answers and those kinds of things.

Q And it was not produced until last October, the morning the trial started.

A That affidavit doesn't reflect that Mr. Burton has a copy of it. It reflects that someone had a copy of it, and that Grant Cutler first saw it on that date.

Mr. Summers' attorney may have the copy of [57] the manual, I would assume, because --

Q In lawsuits, normally when one side has a copy, the other side has a copy; isn't that true?

A Not in all cases of all things. As of this morning, those manuals Mr. Belnap was referring to --

Q That's true, you've got me on that one.

A And you've brought things in yesterday, you showed me stuff from Samantha Bird that I don't have a copy of. I mean you said you got it that day. No, everybody doesn't have a copy.

Q Well, the Samantha Bird documents were certainly produced some time ago around the time of her deposition; isn't that fair?

A I just know that you told me yesterday morning that you got that that morning.

Q That was the affidavit that I found from the Summers case. Okay. Let me move on.

MR. CHRISTENSEN: It may be more time efficient, if we promise not to be repetitive, if Mr. Humpherys could ask about --

THE COURT: It's been a long trial.

MR. CHRISTENSEN: It's going to get worse, true. I'm afraid we're going to have a brief recess, I'll find out what he's found in the manuals, and ask the questions.

[58] MR. BELNAP: I don't object if you want to.

MR. HUMPHERYS: I just have a couple of very short ones. I haven't had time to look through these, but there are a couple I'd like to have him confirm. And then perhaps, when we've had a chance to look at these, there may be some additional questions, and perhaps we can ask them of other State Farm witnesses, rather than have him come back.

REDIRECT EXAMINATION BY MR. HUMPHERYS:

Q Obviously I've only had about, oh, twenty minutes or so to look at the books that you've referred to, but I found a couple of things I would just like to have you confirm with the jury.

In the manual entitled "Bodily Injury Claims Superintendent's School --" Have you been to that, by the way?

A Yeah, I believe I have, yes.

Q And have you used this manual as part of your training?

A I don't believe I have that manual. They offer those as, that you work through in the class, those things that you don't use in your daily work, I don't --

Q Whether or not you have it, what I'm saying [59] is, were you trained with this manual?

A I think with some version of it. I don't know as it's that version.

Q Now, do you remember a section in here discussing average paid claims, and the comparative reports indicating the average paid claims?

A I don't recall discussing those. I could look at that report and tell you if --

Q Sure. It's entitled "Claims Report Calculation," it's an example report. You see here in the column regarding average losses?

A Yes.

Q And average paid?

A Yeah, it details the number of claims received and closed and paid and --

Q The average amounts of things?

A Yes, the average.

Q And it defines and discusses the average amount paid on costs, or on claims, too, doesn't it?

A Yes. As management people, we're aware of all those things.

Q Now, the other item I'd like to have you verify, do you recognize as sample number B under the section of good faith claim handling, a document entitled "Covenant Not to Execute"?

[60] A I see that it's there, yes.

Q Now, this is part of your training; is that right? That you recognize that when the company may not exercise good faith, that there may be an agreement, such as what occurred between Mr. Slusher, the Ospitals, and Mr. Campbell, regarding a covenant not to execute?

MR. BELNAP: Your Honor, this is beyond the scope of cross.

MR. HUMPHERYS: Well, it is in the text, but not in the context of the use of this book, and we would request that we be allowed to go beyond it because of this.

THE COURT: I'll allow it.

MR. BELNAP: I didn't take him into the book. I was just using them as illustrative examples of the courses, Your Honor.

THE COURT: Overruled, you can proceed.

Q (BY MR. HUMPHERYS) All right, now, as one of the items that you're trained with in your book, is a covenant not to execute. Isn't that just like the agreement? Now, it's maybe not the same words and not the same context, but isn't it, in substance, the same agreement that occurred between Mr. Slusher, the Ospitals, and the Campbells?

A I would say that because there's a covenant [61] in a file doesn't mean there's bad faith handling, like you indicated.

Q No, I understand that.

A It's important that we understand the applicability of covenants not to sue, and they are sometimes involved in our file handling of what we do.

Q And you understand, do you not, as part of your training, that in excess verdict cases, the plaintiffs who have sued the State Farm insured and have an excess verdict may enter into one of these covenants just like in your training manual?

A I understand that there are times when people, yes, enter into those --

Q And doesn't it say right here in this example B that the insured would agree to pursue all claims and causes of action that he may have against the insurance carrier?

A That's what it says.

Q Just like what occurred with Mr. Campbell, the Ospitals, and Slusher?

A I believe there was a covenant similar to that.

* * *

[65] * * *

RECROSS EXAMINATION BY MR. BELNAP:

* * *

[67] * * *

Q Okay. Turn to the next page so that I can follow with you. Is there differences between page 7 of the Excess Liability Manual and page 8 of Exhibit 88?

A Yes, they're quite different.

Q Referring you to page 9 and 10 and 11, can you see anywhere in Article 14, the auto document of Article 14, where it indicates, as on page 9, that, "Requests for an early conference as soon as possible for file review and attorneys recommendations as to valuation," and then in parenthesis, "His opinions as to value should not be in writing if the case could involve policy limits," is that found anywhere in Article 14 that you can see?

A No, it's not in there.

Q Is there a difference between the file handler's conference with the attorney from what we were just reading on page 9 of the Excess Liability Manual?

[68] A Yes, it's outlined differently.

Q Going over to page 10 of the Excess Liability Manual, and continuing on page 13, is there also a difference in terms of what is suggested in terms of investigation?

A Yes, it's different.

Q Are the paragraphs different, as well, Mr. Short?

A They are.

Q And then Mr. Christensen pointed out the differences on page 12 of the Excess Liability Manual from this document where it says, "Estimate as to amount of verdict not in writing if policy limits are involved," that's how the Excess Liability Manual reads. Is that how Article 14 reads?

A No.

Q Tell the jury how Article 14 reads, in contrast to the Excess Liability Manual on page 16 of Article 14, paragraph 5.

A Paragraph 5 reads, "Opinion as to probabilities of successful defense."

Q Does it say anything about not putting that in writing, or anything about not doing that, if policy limits are involved?

A It does not.

[69] Q I next want to refer you to page 16 of the Excess Liability Manual. Starting with subparagraph E, it goes through page 19, 16 through 19. Can you see any of the provisions on those three pages in the Article 14 that are in the Excess Liability Manual?

A No, those pages, that section isn't in the Article 14.

Q So in part 5 of the Excess Liability Manual, pages 16, 17, 18, and over to 19, are not part of Article 14?

A They are not.

Q And what we've been referring to, Mr. Short, is a document that is dated October, '81 and refers to a document that it replaced dated 1980; is that correct?

A Yes, I believe that's the dates.

Q And we went through with Mr. Fye, but I'll represent to you that the asterisk changes that are referred to do not deal with any of those subjects that we've pointed out.

Mr. Short, Mr. Humpherys talked to you about a report that's in the bodily injury claims superintendent's school materials that deals with various items. Are there about fifteen columns on that particular report, approximately?

A Yes, there's a number of columns there.

[70] Q And does one of the columns deal with closed average loss?

A Yes.

Q In these materials, Mr. Short, are there any, is there any place in these materials where it talks about a number of different kinds of reports, where it says that you, as a manager for State Farm, should reduce any particular claim being made because of reporting of average paid loss?

A It does not. That section is just an example of the various reports that are available for management to look at.

Q I want to move to another subject that Mr. Humpherys asked you about. He asked you about a covenant not to execute. Do you recall those questions?

A Yes, I do.

* * *

[72] Q (BY MR. BELNAP) But under Utah law, Mr. Short, I'll represent to you that prior witnesses of the plaintiffs have testified concerning the fact that you can't assign a personal claim. And that testimony's in, the jury's heard it for what it is.

The agreement between the Slushers and Ospitals and Campbell, are you aware whether or not that is an agreement to provide and pay over certain proceeds from this case in a percentage amount?

A It's my understanding that the proceeds of the action would be split between the Ospital representative, estate, Slusher, and Campbell, at percentages.

Q Okay. And in return for that, did Slushers and Ospitals agree that Campbell would have no personal liability whatsoever on the judgment?

A Yes, those documents released Mr. Campbell.

* * *

[73] * * *

REDIRECT EXAMINATION BY MR. CHRISTENSEN:

Q Following up briefly the article in the document Mr. Belnap showed you was from the 1980 time frame?

A There were two documents. Which one are you referring to?

Q That's a bad question. He was having you compare a 1980 document with the Excess Liability Handbook. Yes, March, 1980.

A Yes, I believe that's right. With the excess handbook.

Q The point I want to make is simply this. This was written in 1972, the Excess Liability Handbook, right?

A Yes, I believe that's right.

Q So the document he was comparing it to was approximately eight years later.

A Eight years later, and after that other one had been obsoleted by the fire company.

[74] Q If it was in '79. There's some dispute on that. But my point is, there's no question, we don't have the auto manual from '72, do we? You don't have it, we don't have it.

A We went through the manuals a lot yesterday, and I don't, I can't tell you exactly everything that was in the auto manual. The auto manual that was provided probably has some things that were from '72. I'm not sure --

Q The auto manual that was in effect at the same time as the Excess Liability Handbook in '72 is gone, as far as you know. If you've got it we'd all like to know.

A And I guess I'm just trying to say that that manual evolves, like all the others. So what's in there could relate to currently, and some of it goes way back. We don't have one that says it's dated 1972, if that's what you're asking.

Q Right, that's what I'm asking. Now, Mr. Macherle has testified, apparently in another case, that part 5 of this, that you and I looked at, was patterned after Article 14 of the auto manual back in that time frame. And of course you don't have any way of knowing if that's true or not, but that would make some sense, wouldn't it?

[75] A I can't say that it would make sense. I can tell you that the Excess Liability Manual has never been something that I've been aware of, or used, or been part of the auto company.

Q Okay.

A I've never seen it in the fire company in the first five years I spent with them.

Q But if we take Mr. Macherle's testimony that part 5 you and I looked at was patterned after the auto manual, the version of 14 that was applicable in 1972, certainly there's some logic to that, isn't there?

A I think you'd have to look to Mr. Macherle's testimony and see what else was discussed, so that we know what context it's put in.

Q Okay. I'm going to represent to you that Mr. Comella, in the Schlossberg case that I referred to a few minutes ago in Maryland, testified on November 16th of, November 15th and 16th of '88, that State Farm had maintained some historical files, and they had each section of the manual, and the dates that it was applicable. Now, if you assume that's true, he said that in late 1988, then obviously the 1972 version of the auto manual has been destroyed since 1988. Isn't that true?

A Portions of the manual have been obsoleted [76] and taken out and destroyed because they're no longer in use.

Q And a logical time that that would have occurred was in April of 1990, when Janet Cammack came over from Denver and told you people to destroy your old manuals. And remember the memo said, "And corporate's not going to keep a copy either"?

A The logical time would be for us to keep those current as we're supposed to do. As a section becomes obsoleted or outdated, that we take it out and discard it, would be the logical time.

Q But if it happened in April of 1990, then the '72 version of part 5, or Article 14 of the auto manual was destroyed after we requested it in this case, if my assumption's correct; isn't that true?

A Any portions that were not currently in use, that were obsolete and unused, would have possibly been discarded, or would have been discarded by anyone that went through their manual and updated it in 1990 or whenever.

Q If Mr. Macherle's testimony is right, that Article 14 of the auto manual was what was used to prepare part 5, then it would read just like part 5 in this Excess Liability Handbook, wouldn't it?

A I can't -- No, I don't think we can say it [77] would read like that. The documents we've been comparing today are quite different. Substantially different.

Q But they're years apart. And the differences Mr. Belnap had you looking at in many instances were just one or two-word changes. Other times there were more than that. But many times we're talking wording changes, like calling somebody a claims representative instead of an adjuster, right?

A Some of those were those kinds of changes. Others were the numerous pages that were obviously not included in the claims superintendent's manual that were in that excess manual. There's substantial difference between the two when you sit down and compare them.

* * *

[78] * * *

Q One final question. You said that the 1984 agreement that Mr. Campbell entered into with Slusher and Ospital completely released him.

A I said the documents did.

Q Isn't it true that if the verdicts in favor of Slusher and Ospital had been overturned on appeal, then the deal was off and Campbell was right back, re-exposed?

A The deal was off, and we would have had an opportunity to retry the case, I believe, if the Supreme [79] Court would have overturned the verdict. They acknowledged that there was an error, although they didn't feel it was sufficient to overturn the verdict.

MR. CHRISTENSEN: Your Honor, I'm going to move that that be stricken as non-responsive to my question.

THE COURT: Just answer the question.

Q (BY MR. CHRISTENSEN) And so Mr. Campbell would have been re-exposed years later. Do you really think Ospitals and Slusher, after going through all that, would have even considered settling for the policy limits then?

A I would say that -- If the Supreme Court had granted the appeal that was filed.

Q My question --

A You asked me if it was exposed.

Q If it had been overturned on appeal and the case was right back in litigation mode, you don't think, realistically, Campbell would have had any chance, at that point, to settle within the policy limits, do you?

A Oh, absolutely I do.

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EXCERPTS OF TRIAL TESTIMONY OF ROBERT G. SLUSHER, JR., JUNE 13, 1996

[Vol. 7, R. 10262, commencing at p. 179]

* * *

THE COURT: Let the record show the jury's left the courtroom we'll be in very short recess, so stay close.

(Brief recess)

THE COURT: All right, counsel, what is it we need to deal with?

MR. HUMPHERYS: We wanted to address the issue to what extent the issue of damages may be allowed to be discussed with Robert Slusher and the Ospitals. Our proposal was that we treat them the same, regardless of the --

In other words, if they are allowed to testify as to the extent and scope of their damages, that either it be limited to the time of the trial, or if State Farm wishes to address their current status, that that be applicable to both sides. In other words, at the time of the deposition of Robert Slusher they [180] asked him how he was doing, and what kind of work he was now engaged in and so forth.

Our feeling is that this needs to, it probably ought to be limited to the time of trial. We feel that the issue regarding their damages is very relevant for a number of reasons. One, because State Farm continues to contest that they did not intentionally act indifferently or misrepresent the facts to the Campbells. And in doing so it is important that the jury gets a sense of the kinds of witnesses these plaintiffs are.

Second, as it relates to the underpinnings, or the undercurrents of why they were choosing to settle, why they weren't choosing to settle, why they were willing to settle for twenty-five before trial and not after, why they were willing to negotiate the 1984 agreement, and why they were willing to defer

payment and agree not to execute, or the struggles they had, the jury needs to understand what they were confronted with by way of their personal situation and their personal damages.

For example, Mr. Slusher will be talking about how he struggled with whether he should execute directly or not, and there were times when he didn't want to proceed with the '84 agreement, and then there [181] were other times when he decided, yeah, it would be a good thing.

And without the jury being able to address his problems that he was enduring at the present time, or at that time, excuse me, it would be impossible for them to properly assess this issue, particularly in light of State Farm's position and defense that these parties were not really suffering, or it was no big deal, that it was all a facade, that they never intended to execute, that this long, lengthy period of months to negotiate the '84 agreement was just nothing more than attorneys taking too long, instead of the parties struggling with the issues that were before them.

It's relevant to all of those factors, and so though it's not our intention to sit and retry the damage issue, we need to be able to address somewhat about it, so that they can understand the underpinnings of the rest of the issues that were going on.

And so I guess what we're proposing is we be able to address basically what they were faced with by way of their personal plight, or their personal problems, and just limit it to the time period around the accident, because everything thereafter is remote and really has no bearing on the present issues.

THE COURT: Mr. Belnap?

[182] MR. BELNAP: Your Honor, first of all, before this trial started, plaintiffs requested and received a direction from the court to us that we take off of our time line reference to the fact that the Slushers and Ospitals had filed a lawsuit, and had brought a claim, and then that case had been dismissed with prejudice. And Your Honor so indicated to us that we do that and take them off.

They are not parties, obviously. And now they want to get the benefit, through the back door, of something they did not want us to be able to reference to the fact that they were dismissed with a matter of prejudice.

Secondly, the jury verdict in Logan is res judicata. It's in evidence, they've had the opportunity to put it in evidence, they've had the opportunity to put their witnesses on the stand to talk about that. They filed a motion in limine with this court before the trial of this case that, and received an order that we couldn't attack the underlying, the reasonableness of the underlying verdict. It's in evidence. They don't need this evidence.

THE COURT: Your position is there should be no testimony as to Slusher's damage?

MR. BELNAP: Yes, and Ospitals', as well. [183] The judgments have been satisfied. The Pixton case, from the Court of Appeals, is clear that there is no duty owed to a third party, and so, you know, to open up this can of worms, Your Honor, creates another mini-trial in this case, where, you know, where do we stop? Do we get the drawer out and start going through medical records, and then Mr. Humpherys says, "Well, I want it to stop at the time of trial"?

Well, Mr. Slusher went back and became a welder, he became employed now at United Airlines. You know, it just creates a whole family of issues that aren't relevant, and that they've already got in evidence, and that they can argue them however they stack up, and we can argue them however they stack up based upon what's in evidence and what's at issue in this case, Campbell versus State Farm.

THE COURT: Any further reply?

MR. HUMPHERYS: Yes. Mr. Slusher, the jury cannot understand why Mr. Slusher was struggling. For example, I'm using this as an example, of why he was struggling with whether or not to execute on the property, or whether to agree. Unless they understand he had no medical insurance, and he had

outstanding medical bills, and he hadn't worked, and he had all of these problems he was experiencing, we are not eliciting [184] the testimony for the purpose of retrying damages.

And we certainly agree that that matter is solidified, but State Farm continues to raise that. And they will through their experts, that they didn't think that they were acting intentionally, and that they had a good faith basis, or at least not a malice basis, because they thought the damages weren't going to be that high.

I think the door is opened on that issue. The only issue to me is whether it should be discussed at all, which is what Paul has proposed, or whether it should be opened up totally. If it's opened up totally, in other words, how are they presently doing, that's fine, Mr. Slusher can talk about a need for a knee replacement, and trouble he's having and so forth. We're not proposing that.

But the facts surrounding that trial and what they were experiencing, and why they had anger toward Mr. Campbell, absolutely has to be told in order to refute, now, what State Farm is saying, that there was really no intention to execute on the property, and this was really a carefully-planned device that really had no effect on Mr. Campbell. Which simply is not true. So we submit it.

MR. HANNI: Your Honor, I'd like to just make [185] a couple of observations. First of all, we're faced with the legal proposition of which Amerman 2 and the Pixton case say, there's no duty owed to the injured party. None at all. And the named party in this case is the insured.

The damages that they got, that they sustained, the Ospitals and Slusher, that's been determined, it's been judicially determined, it's been reduced to a judgment, and judgment's been paid. That issue is over, it's out of the case, it's done. We tried the liability aspect of it in Phase 1. The jury found that as to Mr. Campbell, there was a duty to settle within policy limits, we didn't do it, we were unreasonable for not having done so.

Now, the issue in this case is, what damage has Mr. Campbell suffered as a result of that? The Campbells, not Slusher, not Ospital. Their damages are totally out of the picture, and we're going to be asking for an instruction, and we believe rightfully so, that the court, when this case is submitted, tell the jury that that's the issue. How, by virtue of State Farm breaching its duty to its insured, what damage did Mr. Campbell suffer?

It doesn't matter about Ospital, it doesn't matter about Slusher. They're over, it's done, it's [186] fixed. And we submit, to let them get into anything, anything about the damages that Ospital or Slusher have suffered, go back and talk about what kind of a young man Ospital was, or the kinds of injuries that Mr. Slusher had, would be totally irrelevant issues in this case.

THE COURT: I understand your point, Mr. Hanni. I'm going to limit the examination to not include damages that Ospital or Slusher, or the Ospital family suffered. I will say that I'm mindful of the argument that the plaintiffs are making, namely that there has been a suggestion in some of the cross examination of the witnesses of the plaintiff that there was not a serious intention on the part of Ospital and Slusher to actually execute on the judgments.

Now, it seems to me that that issue was raised in some examination that, in my mind, was more than adequately rebutted by the examination of the attorneys that Campbell had a present fear, and that fear didn't go away until there was an agreement signed.

However, the issue to me is the prejudice that is likely to be sustained by State Farm by allowing a full exploration of Slusher's damages at the time of the trial against the inference that can be drawn that really Slusher and Ospital had no intention of [187] executing. I mean that's what I have to weigh, here.

And at this point I think, with what I've heard come in, I'm satisfied that there would be greater prejudice to an examination of the damages of Slusher, and to the Ospital family, than by

allowing that, then, would be, I think, probative to overcome what I think is an inferential attack on the fears and the damages sustained by Campbell by being at risk of an execution. That's where I'm at now.

However, if State Farm should pursue that point, and try to make it look as if Slusher and Ospital had no serious intention, and it was a ploy, and it was genuine, and that, in fact, Campbell really had no risk and had no concern, then I'm going to revisit that, and I will allow you to raise that as part of your rebuttal case if I think that that's really where State Farm's going.

I'm not satisfied at this point that's what's really going on. I hear it as part of the cross examination with a couple of tough witnesses, but that issue will be reserved by the court for subsequent revisiting if it's done differently. But as of right now I'm going to exclude all testimony as to Ospitals' and Slusher's damages. Is that a clear ruling?

MR. HUMPHERYS: Is Mr. Slusher allowed to say [188] that financially he needed the money? Can we go into that kind of testimony regarding why he was negotiating --

THE COURT: I'll allow limited testimony. But I don't want anything about what he's suffered or what he's damaged. I will allow you to make a record that he had some present need, but limit it to that.

MR. HUMPHERYS: All right.

MR. BELNAP: Could I ask a quick question, for clarification?

THE COURT: All right.

MR. BELNAP: Would I be able to ask them when they came to their agreement, in their mind, that they ended up signing and writing in December of '84?

THE COURT: Could we ask the jury just to step out, stay by the door just for a moment. The question came up after I sent my clerk out to fetch you, and I apologize.

MR. BELNAP: Let me rephrase that. I think the question was asked by Mr. Humpherys, "Can we ask them if they needed the money?" I, therefore, would like a direction from Your Honor, can I ask them at what point they came to an agreement, or an understanding in their mind that they were willing to go with this conceptual agreement that was reduced to writing and [189] signed in December of '84?

MR. HUMPHERYS: Well, that's a given. They wouldn't have signed it if they weren't willing.

MR. BELNAP: I'd just like, if they're going to get into that he needed the money, can I just ask --

THE COURT: All right, limit it to that. In other words, if Mr. Humpherys asks, you know, "Did you have a medical need?" And you can say, "At what point did you determine that you were willing to accept, whatever your financial burden was, in exchange for an agreement to do that?" I mean that's a fair question, and I'd like to keep it clean on both sides so we don't get into these other issues which I see as being prejudicial to both sides.

MR. CHRISTENSEN: One other clarification. I assume that would mean there's not going to be any questions about Mr. Slusher's current employment?

THE COURT: Right, none of that, of course.

* * *

[190] * * *

ROBERT G. SLUSHER, JR. called as a witness by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. HUMPHERYS:

Q Would you state your full name, please.

A Robert Gene Slusher, Junior.

Q And where do you live now?

A Clayton, Indiana.

Q Mr. Slusher, are you the Robert Slusher who was involved in the accident in May of 1981 in Sardine Canyon?

A Correct.

* * *

[191] * * *

Q Now, have you ever maintained, at any time, personally, as you viewed what happened at the time of the accident, that Mr. Ospital was at fault?

A I didn't think he was at fault at all during the whole accident.

Q Have you maintained that position throughout this entire time?

A Yes, I have.

Q Why was it that you, then, sued both Ospital and Slusher?

A My attorney, Scott Barrett recommended that we do that, so that's the reason I ended up suing both parties.

[192] Q Tell me, if you can, or explain to the jury a little bit about, do you consider yourself able to really understand a lot of this legal stuff that goes on?

A It's kind of hard sometimes. You guys make it difficult.

Q Okay. Yeah, for a lot of people. Sometimes for ourselves. Did you essentially -- Did you rely upon your counsel to make a lot of these decisions?

A Yes, I did.

* * *

[200] * * *

Q In the spring of 1983, Mr. Slusher, did you reach an agreement to settle the claims against the estate of Todd Ospital?

A In June of '83 I did, yes.

Q Was it your -- What was your understanding regarding the claim against Ospital? Would there be any -- Would you be able to get anything more from the estate of Ospital if you once settled?

A No, I would not.

MR. BELNAP: Counsel, are you finished with the board?

MR. HUMPHERYS: Yeah, I'll move it so you can see.

Q (BY MR. HUMPHERYS) Did you also enter into an agreement at the same time regarding a possible bad faith claim against State Farm?

A Yes, I did.

Q To your knowledge, was State Farm cooperating in any way at this time, in terms of trying to settle this case with you?

A No, they were not.

[201] Q Had they given you or your attorney, to your knowledge, any indication of any desire to try and sit down and work this out with you?

A No, they did not.

Q Did you eventually make an offer to State Farm, a formal demand offer?

A Yes, we did.

MR. HUMPHERYS: This is already into evidence, Your Honor. A letter dated August 9, 1983 from Scott Barrett to Wendell Bennett. I'll put this on the screen.

Q (BY MR. HUMPHERYS) I'll read it. "Dear Mr. Bennett." This is a letter dated August 9, 1983 from Scott Barrett, who was your attorney, right?

A Correct.

Q "We have been advised in response to requests for admissions that the insurance coverage of Curtis Campbell is $25,000 for one person and $50,000 for more than one person at the time of the accident involving my client Robert Slusher.

"Based upon that representation, Robert G. Slusher, Junior offers to settle his claims against Mr. Campbell and his insurer for the sum of $25,000. This offer is good for twenty days only from the date of this letter.

[202] "Please take notice also that if the case is not settled, Mr. Slusher will vigorously pursue his claims against Mr. Campbell, and if the award is greater than $25,000, Mr. Slusher will vigorously pursue the recovery of any amount awarded against the insurer on the ground that it failed to settle in good faith.

"I am sure you are aware that there is ample evidence that Mr. Campbell attempted to pass at an unsafe time, and that his action in so doing triggered the events that caused the death of Mr. Ospital and the serious injuries of Mr. Slusher. Very truly."

Did that accurately reflect your position at that time, Mr. Slusher?

A Yes, it did.

Q Based on your knowledge and information that came to you, what was State Farm's response to this letter?

A There was no response. They didn't reply back.

Q Was it your understanding that they -- Did they ever offer any amount prior to the verdict in this case?

A No, they did not.

Q Now, if State Farm wrote your attorney, you didn't know about it; is that right?

[203] A Correct.

Q But you did know that they did not offer any amount.

A That is correct.

Q Now, after the settlement, excuse me, after the trial of this matter, did you then seek to have Mr., did you then seek to have State Farm pay your full judgment?

A Yes, I did.

Q Did they respond?

A About a couple of months after the verdict.

Q And what did they offer to you?

A The policy limits, $25,000.

Q Were they willing to give that to you and let you keep the rest of your judgment?

A Are you saying were they willing to pay the whole judgment at the time?

Q No. Were they willing to just give you $25,000 and let you keep the remaining part of your judgment, or did they ask you to get rid of the rest of your judgment in taking it?

A All they offered was $25,000, and that was it.

Q Okay. And did they condition that upon you releasing the rest of your judgment?

[204] A Yes.

Q Was that acceptable to you at that time?

A No, sir.

Q Were you in a situation where you needed money?

A Yes, I was.

Q Were there outstanding medical bills owing?

A Yes, there was.

Q Did you have any medical insurance to cover any of this?

A No, I did not.

Q Had you been able to work much at all since the time of the accident?

A No.

Q And what were your feelings regarding your desire to execute against Mr. Campbell's personal assets?

A I didn't think that -- I talked to my folks, and as far as executing their property, and I decided to execute. I needed the money for school and stuff, you know, I went back to school, and my injuries, and my medical bills, and I needed a place to live. I couldn't work.

Q And did you carry out your desires to execute, or did you then consider a possible agreement [205] with Campbells?

A Later on I decided to have an agreement with Mr. Campbell.

Q When you reached -- What was your understanding of the agreement with Mr. Campbell? Would you continue your ability to execute on that judgment?

A No, I did not.

Q Did you understand, when you were thinking about making this decision, that you were giving up your right to execute and get your money?

A Yes.

Q Did that cause you any concern?

A Yes, I talked to my parents for a long time about it.

Q Was it an easy decision to decide to give up the right to execute against Mr. Campbell?

A No, it wasn't.

Q When you did reach this agreement with Mr. Campbell, did you know that you were going to get the full amounts of your judgments in the future? Was it certain to you?

A No, it was not.

* * *

[206] * * *

Q All right. What thoughts did you have regarding whether or not you would ever be able to recover your judgments in the future if you signed this agreement with Mr. Campbell?

MR. BELNAP: I also have a relevancy [207] objection on the record, if you please, Your Honor.

THE COURT: You may. Overruled.

Q (BY MR. HUMPHERYS) Go ahead.

A I did have doubts. Like I said, I talked to my parents about it, but you know, we went through, it was about a week trial, I think six, seven days, and it was a pretty bad experience. I just wanted to get it over with.

Q Did State Farm ever offer to pay you your judgment after that period of time?

A No.

* * *

[208] * * *

Q (BY MR. HUMPHERYS) Mr. Slusher, did you have any understanding, at the time State Farm offered to pay the judgments in the spring of 1986, whether Mr. Campbell had to release his bad faith claim in order [209] for that to happen?

MR. BELNAP: Excuse me, counsel. I'm also going to object, lack of foundation and relevancy as to this witness' understanding of Mr. Campbell's position. He's got counsel that can represent him. What his understanding is, is irrelevant.

THE COURT: Overruled, you can answer.

MR. HUMPHERYS: Okay, go ahead.

Q (BY MR. HUMPHERYS) Do you remember the question now?

A Could you please repeat it?

Q I'm not sure I can remember now. Let's see if I can get past this. In the spring of 1986, when you mentioned that State Farm had offered to pay your judgments, did you have an understanding whether or not that offer was depending upon whether Mr. Campbell would release his bad faith claim?

A Yes.

Q And what was your understanding?

A My understanding, as far as myself, was that if I go ahead and agree to the policy limits, for State Farm to pay everything, including the interest, I had to drop the bad faith claim.

Q Did Mr. Campbell have to drop it as well?

A Both of us did.

[210] MR. BELNAP: Your Honor, I'd move to strike, again. That's the same thing that was said before, that the court struck.

MR. HUMPHERYS: Your Honor, let me clarify this. This witness does not understand what it means to have my claim or his claim. And I think with a clarifying question I can --

THE COURT: All right, clarify it, and if it's --

Q (BY MR. HUMPHERYS) Mr. Slusher, when you say that, when you refer to "my bad faith claim," was that, are you referring to the 1984 agreement?

A Yes. Yes, that agreement.

Q All right, that is your right to some of the recovery; is that --

A Yes.

Q Now, I appreciate you may not understand all of the legal ramifications, but that's all right. So at that point in time, was that an acceptable proposal to you?

A No, it was not.

Q Now, eventually, in 1989 they did pay for the judgment?

A Yes.

Q And they paid that in full, after the appeal?

[211] A Yes, they did.

Q Interest and costs?

A Yes, they did.

* * *

CROSS EXAMINATION BY MR. BELNAP:

Q Mr. Slusher, do you recall there being testimony at the trial of the case that there was a distance of approximately 1,700 feet from where Mr. Ospital would have sight down to where the accident happened?

A I don't recall.

Q Okay. You don't recall Mr. Campbell actually passing you; is that correct, sir?

A No, I did not say that.

Q Okay. I'd move to publish your deposition [212] from the underlying case.

MR. CHRISTENSEN: Could we approach the bench, Your Honor?

THE COURT: You may.

(Side bar conference held out of the hearing of the Jury.)

Q (BY MR. BELNAP) Mr. Slusher, would it bother you if I stood here by you for a moment? Is that all right?

A Yes.

Q Okay. Were you asked the question -- This is a deposition that was taken by Mr. Bennett. Do you recall being in his office?

A Yes, I do.

Q Okay. Do you recall that at your deposition at Mr. Bennett's office, that Mr. and Mrs. Campbell were also present?

A Yes, they were.

Q Did you meet them at that deposition?

A Yes, I did.

Q Okay. Were you asked the question, sir, "Do you remember him passing you?"

And you answered, could you just read that first line?

A "No, really, I don't remember him passing me, [213] because I was talking on a CB and stuff."

* * *

[216] * * *

Q All right. Do you recall learning in about January of 1994 that your attorney had met with Mr. Campbell's attorney, and with Mr. and Mrs. Ospital's attorney, and a proposal was made to enter into an agreement with Mr. Campbell?

A Yes.

Q And did your attorney advise you of that around January of 1994?

A Yes.

Q Did you indicate to him at that time --

MR. HANNI: You said '94.

[217] Q (BY MR. BELNAP) '84, thank you. In January of 1984?

A Yes.

Q Did you advise your attorney that that was an acceptable approach for you?

A It was mainly his decision on that.

Q But did you indicate that was acceptable to you in January of 1984?

A I agreed with him, yes.

Q Mr. Humpherys asked you if you were aware that State Farm offered to pay your entire judgment in February of '86. Do you recall those discussions?

A Yes.

Q Were you also aware that in August of '86 there was an offer made to pay your entire judgment, with interest, if the appeal was not successful?

A What do you mean, if the appeal was not successful?

Q In other words, if the Supreme Court affirmed what the jury did in Logan, that State Farm would pay your entire judgment with interest, and that was stated in a court record in August of '86? Were you aware of that?

A Now, I was aware that State Farm went ahead and wanted to pay all the judgment that happened in [218] September of '83 with interest.

Q Okay.

A If I dropped this bad faith agreement in December of '84 that was signed.

Q All right. Did anybody tell you that in August of '86 State Farm, without condition, indicated they would pay the entire judgment with interest if the appeal was not successful?

A I can't recall that.

Q All right. And did State Farm, one month after the Supreme Court made its decision, pay your entire judgment, with interest?

A Yes.

Q And costs?

A Yes, it was six years from the date, just about.

MR. BELNAP: Thank you.

* * *

[241] MR. HUMPHREYS: Regarding manuals, that can be said of all manuals. The records management manual, as far as I understand, was a change somewhat in their general corporate policy toward destruction and retention. And it's simply reflective of their current position regarding the retention or destruction of documents.

The manual is very short. I don't find anything particularly incredible about it. They've given it to one of their experts who's given testimony about it. It is distributed widely throughout the company.

The part about the research regarding what needs to be destroyed and what doesn't, that's simply a matter of public record for the most part. Each state has particular laws about what needs to be saved, claim files for so long and so forth, and as I've reviewed that, someone has gone to a lot of effort and trouble to find out what each law requires, but that doesn't make it compelling. It's all public record, it's simply a compilation of public record, and public regulations, and how long you need to keep documents for, or not keep [242] documents for.

The mere fact that it took hours of research, to me, is irrelevant in terms of a compelling need to somewhat keep it confidential, where the basis of it, it's all public, it just takes someone a long time to compile it.

Next, the application of the law in terms of retaining or allowing destruction of certain documents is something that applies across the board to all companies. It is not proprietary in the sense that somehow a company would never be able, a competitor would never be able to know how to find when, or how long a document needs to be retained through the regulations and laws.

And I haven't found anything proprietary in it. Within the exhibit also is included certificates of destruction where employees sign that they have destroyed documents. There's nothing compelling or proprietary about that. At least that I can understand. They send out these certificates that employees have to sign, certifying they've destroyed certain documents.

There is another part of the exhibit which pertain to hold orders, which are where State Farm sends out notice to certain people, "Please hold the destruction of these claim files," or these manuals, or [243] these documents, "because they are subject to a court discovery order, or some other reason, or regulatory inquiry or audit or whatever."

* * *

[245] * * *

MR. BELNAP: We do need an opportunity -- it doesn't need to be today, Your Honor, nor tomorrow -- but an opportunity to bring a matter before you, before Mr. Fye testifies.

MR. HUMPHERYS: Can we know what that is?

MR. BELNAP: Yes. We don't believe that it's appropriate for a witness -- and it goes back to, I think, an order Your Honor has already indicated in regard to the use of other cases -- but we don't believe it's appropriate for a witness to be able to say, "I'm aware that in a certain case in the district of South Carolina where State Farm got hit with a judgment for X-number of thousands or million dollars in punitive damages," or, "I'm aware that they got hit down here for certain [246] number of dollars." I want an opportunity to argue that.

THE COURT: Counsel, is this a real issue? Is Mr. Fye going to do that?

MR. CHRISTENSEN: Depending on the context, I don't think you can have a blanket exclusion of cases. We think it's very relevant for a jury in a punitive damage case to know that a defendant has had punitive damage awards rendered against them before, and it has not deterred them. I think that's right square within the heart of the kinds of evidence a court, a jury is entitled to know as it determines an appropriate amount.

THE COURT: All right. Well, I don't want to get into the argument. It's tempting, but it sounds like we have an issue that

we need to talk about. What my view is on this, I'm not sure I want to do it on Friday, but let's --

It's helpful to be able to reserve issues for after hours, as we have. It saves precious time with our jury. So let's schedule it for Tuesday or Wednesday. I'm willing to make available either of those times. And frankly, I appreciate the fact that we've had very few issues we've had to argue either in the morning or during trial, because it just takes our jury time, and that'll work.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF ROSA SMITH, JULY 17, 1996

[Vol. 25, R. 10280, commencing at p. 182]

* * *

ROSA SMITH called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHULTZ:

Q Would you please state your name.
A Rosa Smith.
Q And where do you live, Ms. Smith?
A Ogden, Utah.
Q Are you married?
A Yes, I am.
Q Do you have a family?
A Yes, I do, I have a son, thirty, and a daughter, thirty-five.
Q And what is your age?
A Fifty-eight.
Q Are you presently employed?
A Yes, I am.
Q Where do you work?
A I work for State Farm Insurance in Ogden, Utah, as a bodily injury claim representative.
Q And is your employment with State Farm Mutual [183] Automobile Company?
A Yes, it is.
Q When did you first become employed with State Farm?
A 1979.
Q And what was your position when you first became employed?
A When I first became employed I was called a combination claim representative, I handled property damage, no-fault benefits, and bodily injury claims. Minor bodily injury claims.

Q During the course of your years with State Farm, have you ever been promoted?

A Yes.

Q What positions, position or positions, have you been promoted to?

A I was promoted, what you could call promotion, to a bodily injury claim representative, where I deal with injury cases, with attorneys and directly with the claimant.

Q And how long have you been involved with, as a bodily injury representative?

A Ten years.

Q And have you worked almost that entire time in the state of Utah?

[184] A Yes.

Q Have you been in the Ogden office?

A Yes.

Q Do you have experience in handling storm duty?

A Yes, I do.

Q Would you explain what your experience in that regard is, and what your training has been in that regard?

A Training has been, we have training in Greeley, Colorado, once a year for storm supervisors. Training for the storms are basically on-hands training. We have a reinspector trainer there, we go right on site, they train us. And I worked nineteen, my first storm was 1981 in Pueblo, Colorado, where I was a claim representative, I wrote drafts for the estimators who did the estimations, estimating on the vehicle damage.

Q How many storm duties have you worked on, Ms. Smith?

A Ten or twelve.

Q And can you just give us an idea of the different locations? You don't have to tell every one, but just some of the various places.

A I've worked in Pueblo twice, Provo once as a storm supervisor there, Orlando, Florida, Cody, Wyoming, [185] Sheridan, Wyoming, Wheat Ridge, Colorado, Highland, Colorado. That about covers it.

Q Okay.

A Colorado several -- Oh, Lamar, Colorado, Boulder, Colorado.

Q And when you worked in Orlando, Florida, what kind of a storm was that?

A That was a hail storm.

Q How many storm duties have you been the supervisor for?

A Since 1987, I have been the supervisor seven, eight times.

Q And when you're the supervisor on storm duty, that basically means you're the one that is in charge of the crew that comes over to assist on a storm?

A Yes, I'm in charge of the crew and the operation, and I answer to Greeley daily.

Q Can you explain, during a storm duty, whether or not State Farm tries to keep track of the amount of money that is being paid?

A Every penny.

Q And why is that?

A We have to call that in, as we cash out estimates, make cash settlements, we keep a column for cash settlements, we keep a column for estimates written [186] which we did not cash out, that those people will get their car repaired later, we call that in to Greeley every night so they can set money aside to take care of the daily money business.

Q Is keeping track of the amount being paid, does it have anything to do with the amount of personnel you're going to have to keep on the storm?

A Yes.

Q How does that come into play?

A If you go on -- Every estimator keeps a log of cash outs, released, they bring them to the claim representative, we cash them out. We also keep that log, we look at that ongoing through the day's business to let management know the average paid cost of that storm, how severe that storm's going to be, if we need more claims people to help on that storm, and it basically tells you how long that storm's going to last.

Q And so if the amount being paid starts to go down on a daily basis?

A Yes.

Q Does that give an indication that you might not need as many people there?

A Yes, if it maintains. We take the money paid out today, divided by the cars we have looked at, and say it's $3,000, as that figure starts to drop on a [187] daily basis, then we look at it like, when it gets down around three or $400 then we know we're going to be out of town in a few days.

Q And is one of the reasons that, as that average paid starts to drop, you know that you're getting close to the end of the storm?

A Yes.

Q Is one of the reasons because you take the more severely damaged items first?

A Most generally those people with the more severe damage will call, because they have broken glass or open exposure, and they want to get their cars in and get them estimated so that as the storm goes on, the damage gets less and less, and they don't need us in town any longer.

Q Okay. Now, you indicated that the first time you went on storm duty was in 1981 in Pueblo, Colorado.

A Yes.

Q Did you meet an individual by the name of Bruce Davis on that storm duty?

A Yes, I did meet Bruce.

Q And do you recall what his assignment was on that storm?

A He was an estimator.

Q And your assignment was as a claim [188] representative?

A Claim representative.

Q Now, can you explain, just real generally, the process -- and I think the jury's already heard this -- that typically the estimator would first, would be the first one to see the vehicle and to look it over and to estimate the damage?

A He would be the first one that would talk to the customer, take them out to their vehicle, go around the vehicle, explain what estimate he was writing, like damage, bring them back in, bring them to a claim rep, and we would write them a draft, or discuss settlement with them.

Q Now, if you got the -- When you got the estimate from the estimator on the Pueblo storm, as a claim representative, then what was your responsibility? What did you do to deal with the policy holder?

A They would come, sit down at my desk or table or whatever we were working at, I would go over the estimate with them, there's a column for repairs, replace, go over that estimate with them and explain, and it also explains it on the back, tell them what the settlement was.

Q Did you explain to them -- For example, there's been testimony here about appearance allowances.

[189] Are you familiar with what that is?

A Yes.

Q If a claim representative, or an estimator, brought you a person, a policy holder, and on the sheet, the estimate sheet there was some indication of an appearance allowance, what would you do insofar as your discussion with the policy holder about that at a storm?

A I would ask him if the estimator went over that, or her, excuse me. I would ask the person if the estimator explained to them and discussed what that appearance allowance was for, if they understood it, and then I would settle with them or cash them out.

Q Did you make --

A Appearance allowances -- Excuse me.

Q Go ahead.

A Appearance allowances are rarely used.

Q And did you explain to them what an appearance allowance was, if they didn't understand it?

A Yes. Yes.

Q Did you explain to them their options?

A Yes. Most people in Pueblo, Colorado know. In fact, they will bring in their prior estimates, because they have several storms there, and they will bring in their prior estimates that was written on a prior storm to us, and so they're all very familiar.

[190] Q And you say they're very familiar with what?

A With claims handling on hail storms.

Q So you've had experience in Pueblo where policy holders have actually come in with a prior estimate?

A Yes.

Q And they understood what appearance allowances were?

A Exactly.

Q Did you ever have an experience where somebody came in with a prior estimate and asked for an appearance allowance?

A We don't consider, on an appearance allowance we don't consider a prior estimate as a prior loss on appearance allowances.

Q So if they came in and had an appearance allowance before, and now had more damage, they'd be entitled to full benefit?

A Exactly. Exactly.

Q Now, there's been some testimony, here, Ms. Smith, that at the Pueblo storm duty in 1981, there was a competition among the estimators to see how much money they could save, or avoid paying, by, in effect, deceiving policy holders into taking appearance allowances, rather than what they were entitled to.

[191] Now, my first question is, did you ever have occasion, during the time you were on that storm duty, to be in the same area, or meet with the estimators?

A What do you mean, meet?

Q Well, did you go to dinner with them?

A Yes.

Q Did you congregate occasionally together?

A Yes, we did.

Q And did that include Bruce Davis?

A Yes, it did.

Q And was there an individual, another individual from Utah that came over and assisted with estimating?

A Yes.

Q Who was that?

A Dennis James out of Provo.

Q His name, again?

A Dennis James, out of Provo. And I believe there was also a Hap Johnson, and I think he was out of Provo also. I think he's passed away.

Q Okay. And were you acquainted with Dennis James prior to that storm?

A Yes.

Q You knew who he was?

A Exactly, yes.

[192] Q Okay. Now, the room where you worked as a claim representative, was it separate from the room where the estimators worked?

A Yes.

Q But when the estimators brought people in to you after they'd done their estimate, did they actually walk into your room and bring them in?

A The estimators, yes. Well, at that -- Normally we will work out of a garage. This is the only time we've ever worked in a place where we were separated, because we couldn't get the office space. And that particular storm we had a room where the claim representatives were, and the support staff, the estimators were in another room, and also another claim rep was in with them.

And like this common area here, that's where our customers all sat together. And it was like everybody's looking at them, but the estimators, it was like a partition. It was not like a fourteen-foot hallway or anything. It was like a partition.

Q Okay. Well, as a claim representative on that Pueblo storm duty, Ms. Smith, were you advised that you, yourself, had a competition with the other claim representatives to see how much money you could save by not paying what was owed?

[193] A I was never advised there was a competition, nor have we ever had competition on storm.

Q Now, how many days were you over there on that storm duty?

A In Pueblo?

Q Yeah.

A I believe ten to fourteen.

Q Okay. Now, as I indicated, Mr. Davis has testified that he had a competition with the estimators in that regard that I've already talked about.

A Okay.

Q Okay? In any of those days that you were there, when you saw Mr. Davis, went to dinner with him, or happened to see him during the day, did he ever report to you that he was involved in a competition to get as many appearance allowances as he could?

A Never.

Q Did he ever --

A There was no competition.

Q Did he ever tell you that he was keeping a written record of that?

A No, I did not know he was keeping a written record of the competition. Everybody keeps a record, every estimator keeps the log, every adjuster keeps the log.

[194] Q Okay. What I was asking you, though, was did he ever tell you that he was keeping a record?

A No.

Q Comparing how much should have been paid to what he was really paying, and how much he was saving? Did he ever tell you that?

A No.

Q Did Dennis James tell you that the estimators were having this competition among themselves?

A No. No one had ever mentioned it, it was not discussed. The first time I heard about it was from Bruce Davis.

Q When did you hear about this claim that Bruce Davis was making about this competition in Pueblo?

A It was in May or June of this year.

Q And how did you find out about that?

A Since the Pueblo storm he has come to Utah and has worked as a public adjuster, representing injured people, when I deal with him, from an insurance standpoint, so I have occasion to talk to him. We have a claim rep in our office who went on storm duty, and he called me about one of his cases.

Q Who called you?

A Bruce Davis.

Q And this is a couple of months ago, you're [195] saying?

A Yes. And then --

Q And he called you to talk to you about a case that one of your co-workers was handling?

A Yes, and then he got into State Farm and our practices in Pueblo.

Q Did he bring this up, or did you?

A Yes. Well, there would be no reason for me to bring it up, because I didn't know anything about it until then.

Q So what did Bruce Davis say to you?

A He was saying, "Do you remember in Pueblo where we gave appearance allowances?"

And I said, "I don't recall that. We don't give that many appearance allowances, Bruce."

And then he got into estimating and people that would come in with older motor homes, campers with decals on them, and I finally asked him if he was sure it was the same storm I was on, and was it with State Farm? And I think the end of the conversation was I asked him what he had started smoking.

Q You made it clear to him, did you, that --

A Yes.

Q What he was telling you was not what happened on the storm you were on?

[196] A It was not what happened. It was not what happened.

Q And did he tell you when he called you up and brought that subject up, that he was going to be a witness in a lawsuit?

A He had told me in conversations, and I have not logged them, early on, that he was going to be the expert witness of this lawsuit, but I did not know in what way he was going to be.

Q Okay. Just generally speaking, in a storm duty situation -- and you've had a lot of experience -- in your view, is there time to run these kinds of competitions?

A You don't have time. You're working every twenty minutes on an estimate the day the storm is up and running. We don't even have time to take a lunch, we do not even have time to discuss the claims, let alone have a competition.

Q Did you get any kind of recognition from State Farm for having taken part as a storm duty person in Pueblo in 1981?

A Yes.

Q And how did that come about?

A When you go on storm they have a banquet after the storm is over, and everything settles down, [197] they have a banquet. And they give you, I got a beach towel, because that was my first storm I had been on. As you increase your number of hours on a storm, because it's a voluntary thing, then it got increased to a pen and pencil set or something one year.

Q Do you recall at this banquet that it was announced that Mr. Davis had come in second place in an appearance allowance competition?

A I wasn't at that banquet. I'm from Utah. I don't recall being at that banquet. We did have -- We have a claim conference, or we used to have a claim conference every two years, and when we had claim conferences for all the employees, estimators and claim representatives, the people that served on storm would go a day early for their acknowledgement, and they would give those awards out at that banquet, how many hours you served that year on the storm.

Q So what you got was based just on the time you spent?

A The days I spent on the storm.

Q Have you ever been to a recognition banquet on a storm duty situation, in all your experiences, where somebody has said, "We're giving a prize because this person saved the most money by using appearance allowances"?

[198] A No.

Q Now, I need to ask you a few other questions about what Mr. Davis has testified to, here. He has said that in his view things he testified about were happening in Utah claims handling areas, because Utah and Colorado were in the same region. Do you understand Utah and Colorado are in the same region?

A Yes, I do.

Q One of the issues that Mr. Davis brought up, Ms. Smith, was that State Farm instructs its claims people to make early contacts, within twenty-four or forty-eight hours of the time a claim is reported. Can you explain what State Farm's policy in that regard is in your area?

A To make contact as soon as possible, to be able to tell that policy holder or claimant, give him a service on what to do with their vehicle. If it's a non-drivable vehicle, then we ask him to get into a shop, or we'll do an estimate to cut down on storage costs, to tell them about their injuries, if they have any injuries that they have any question about, what they should do with their medical bills, and to give them service.

Q And if you're dealing with a claimant, what is State Farm's policy? Say, a third-party claimant who [199] has a bodily injury claim?

A Same policy.

Q And has that been your practice?

A Yes. It could be a future policy holder if you give them good service.

Q Mr. Davis has testified that the reason State Farm wanted contact within twenty-four hours or forty-eight hours was so that a statement could be obtained from the individual, before symptoms of injury appeared. And then if symptoms appeared later on, that statement would be used to try and discredit the witness. Now, is that the motive that you've understood?

A No. No.

Q Why is it, then, that you really want to get on to claims as quickly as you can?

A Because these people are injured and they don't, or they've suffered a loss, and to explain to them how we're going to handle their claim, and to give them service. That's what they pay a premium for.

Or if it's a claimant that our insured has injured, then we want to take care of him as fast as possible and as quickly as possible. We rarely make -- I don't know when I've made my last first contact settlement on a bodily injury claim.

[200] Q Mr. Davis has also testified that it was State Farm policy to treat claimants or policy holders differently based upon their station in life, their economic status, for example. Has that been the policy that you've been taught by State Farm to handle here in Utah?

A We have never been taught to treat anybody or anything any differently.

Q For example, he's suggested that if you were dealing with a retired couple, you'd try to settle with them for less because they'd be less likely to sue than you would, say, somebody who's not retired, who comes in in a large car and an expensive set of clothes. Has that been the approach you've been taught to take?

A I haven't ever been taught that approach. It could be my mother, or my aunt, who doesn't understand the insurance processes, and I want to take care of those people.

Q Do you ever tell claimants, for example, about their, the issue of the threshold in Utah?

A Yes.

Q And just explain what you tell claimants about that.

A I contact a claimant, and take a statement about his injuries, as you said earlier. We do that on [201] every injury file to preserve the record. I will explain to him to get hold of his no-fault carrier, and once his injuries or his treatment is completed, or he's reached a threshold, and he's reached the threshold, he's entitled to general damages for pain and suffering.

Q Do you explain what that threshold is?

A Yes.

Q There's been testimony also that State Farm teaches its claims people to evaluate cases differently -- Well, first off, to try and control claimants, or policy holders, even, from getting an attorney. Has that been your instruction?

A No. No, if they feel better with an attorney then they should get one, and I'll deal with them.

Q There's been testimony that State Farm evaluates claims differently if the claimant has an attorney, as opposed to not having an attorney. What has been your experience in your handling of claims?

A We evaluate the claims the same if they do have an attorney or don't have an attorney. However, in this society, I guess, or whatever, once they get an attorney, that attorney normally has his own doctor friends that he sends them to build up the specials more, or to get an impairment rating to increase the value of that claim.

[202] Q Have you ever heard the concept at State Farm of keeping control of your files?

A Would you explain that, please? I control my files.

Q Yeah, what does it mean? How do you control your files, I guess is what I'm --

A You work your files, you're proactive in working them and trying to close that file and resolve the injury or property damage with whoever you owe.

Q And what do you do when you say, "I work my files"? Just give us a rundown. What kinds of things are you doing on a file to be proactive?

A I'm making phone calls to the claimants, the insureds, to see if they're taken care of as far as their collision is concerned, their property damage. I call claimants every thirty days if they're not represented, ask if they're still treating, have they turned their medical bills in to their insurance company. If they're through treating I tell them to notify me, and if they want to set up an appointment we'll discuss it.

Q How do you go about investigating a claim, besides contacting the insured and trying to keep, or the claimant, or trying to keep track of medical billings and so forth? What else do you typically do?

[203] A You get a police report, you take witness statements, you get a medical authorization from whoever is injured, you request doctor's reports, medical information regarding their injury.

Q Let me ask you about an issue that Mr. Davis also talked about, and that was that he was on a regular basis instructed to reduce average paid costs per claim. Is that something that you have been required to do in your work?

A No. I was not even familiar with average paid costs until this trial.

Q Has your job been dependent upon paying less than fair value on claims? Have you been required to do that to keep your job?

A No. No, probably if I paid less than I was required to pay or they were entitled to, I would not be here.

Q And when you got promoted was it because you'd been paying unfairly?

A No.

Q Did you ever take advantage -- this is something else that's been suggested -- ever take advantage of a claimant or a policy holder by trying to pay less because the claimant or the policy holder was a woman?

[204] A No.

Q Have you ever heard of the concept of, or a thing called a buck slip?

A Not until my deposition.

Q Okay. Have you ever used these yellow sticky notes?

A Daily.

Q In your work? How do you use those in your files?

A If I get a phone call and don't have the file in front of me I will jot it down on that yellow sticky, stick it on my lamp above my desk, and when I get that file I will transpose that to the activity log.

Q It's been testified, here, by Mr. Davis, that buck slips, which he says was the forerunner of yellow sticky notes, were used to put things that were derogatory about State Farm in a file, and then if that file became involved in litigation and a request was made for that document, or that file to be produced, every level of person who had handled that case would go through the file and remove everything that was on a buck slip, or anything else that was negative.

A That's incorrect.

Q Now, has that been your instruction at State Farm?

[205] A No.

Q Have you ever done that?

A My boss hates buck slips. You wouldn't have time in your daily business to do all that.

Q And have you made it a practice, then, to change files and remove negative things from the file?

A I have never changed files or removed anything that I've put in there as a permanent record.

Q On a storm duty, have you ever heard of the concept of "neighborritis"?

A Yes, I have.

Q What does that mean to an insurance person?

A That means, normally in an area where there's a hail storm that's hit in a centralized area, everybody knows everybody, they're all neighbors, or they go to the same church or community center or whatever, and they share their estimates, or how much they made, or got off of that storm, or how much their damage was, with their neighbors or whoever they come in contact with.

If we had paid one neighbor, and this is just -- One neighbor got $1,000 because maybe he had glass breakage or whatever, and another neighbor may have gotten two or $300, then they would want to know why, where the difference was. It could be, like I say, [206] maybe their car was newer, or they felt they were all going to get the same thing, I guess.

Q Is a storm the kind of a situation where you can, in your view, and based on your experience, you can go in with the intent of cheating and defrauding people?

A That is not our intent, and we would be run out of town the next day. Our purpose of storm is to get there as quickly as possible, to alleviate our agents, because normally you have an agent and a secretary, and the minute the storm hits that phone's starting to ring.

State Farm has their own phone system that we bring in and publicize that number to tell the public on the radio, in the paper, and TV, to tell that public that we are in town, and these are the numbers they can call to make an appointment. Otherwise they would never be able to get through.

You couldn't, on storm -- You have body shops that are depending on you to write an accurate estimate, you have the agents who that policy holder is insured with, depending

on you, and there's no way possible, if it's your intent to go in and take advantage of people. You have the news media, you have the insurance commission. You just don't do it that way.

[207] Q Do you know, or have you ever heard of, in your time you've worked here for State Farm in Utah, of a thing called pride month?

A Yes.

Q What is it?

A Pride month is a month the company sets aside to promote claims handling. Like we'll have subrogation collection, which means if Allstate owes me $4,000 on a claim, then I want to get it in there and get that bill sent out to them so we can collect subrogation. It's just an awareness month to be proactive in handling your claims and collecting what you owe.

Q Now, there's been some documentation put up here on the overhead projector from 1986, a memo in Utah that talked about some contests that were going to be held during pride month. And one of them had to do with one unit in one city against another unit in another city regarding appearance allowances and depreciation and equivalent parts. Are you aware of that?

A I'm not aware of that. In my job it would be more like subrogation or reducing my inventory, be proactive in working those files that needed to be worked in order to reduce your inventory.

Q Now, is the purpose of pride month to require State Farm's claims handlers to compete to see who can [208] cheat the best?

A No. It's not a competition, it's an awareness.

Q And were there some awards or prizes given on pride month?

A I got dinner for collecting subrogation, I also got a dinner for each claims office, the claims people elected or

nominated a claims person as the outstanding claim rep of that year, and I was fortunate to get that one year. I got a dinner.

Q Okay. And did you view that award as an incentive to cheat people?

A No, that's not the intent. I think it's more of an intent to work as a team to resolve.

Q Now, in this case, State Farm produced copies of the PP&Rs that it has for you over the last several years. Are you aware of that?

A I guess, yes.

Q Okay. Have you had a chance to look at your PP&Rs?

A I briefly reviewed them.

Q And they go from, I believe 1992 up to the present day?

A Uh-huh.

Q In reviewing those, did you find any goals [209] that were being impressed upon you to reduce average paid cost per claim?

A No, I did not. I view PPRs as a personal awareness to improve the areas that you need improvement in. If you need them to be improved in contacting people, or -- You know, I view it as looking at yourself as needing improvement in certain areas.

Q Now, here's one of your developmental goals from your PP&R dated January 16th, 1992. Can you read that first developmental goal that you had for that year?

A "I am personally accountable for providing prompt, accurate, friendly, and cost-effective service to our customers."

Q Okay. Did you view that as an inappropriate goal?

A No.

Q Did that mean to you that you were supposed to cheat people?

A No.

Q Let me show you one of your other goals and just see if you can explain what this means. This is the same year, and it's another developmental goal. Can you read that?

A Which side, here?

[210] Q Right there.

A "Have a telephone or in-person conference with a defense counsel on each newly-assigned suit, to be done within two weeks of referral to the attorney."

Q Now, what is that talking about?

A That is talking about suit files. Once a file, suit has been filed, to get with that attorney within two weeks- -

Q Which attorney are you talking about, there?

A We're talking about the first party, our attorneys.

Q The attorney that State Farm hires?

A Yes.

Q To represent the insured?

A Represent our insured.

Q And so you're supposed to get in touch with the attorney for the insured within a couple of weeks?

A Yes.

Q And do you attempt, as part of your claims handling practices, to keep in touch with the attorney and know what's happening?

A It's an ongoing claims handling until that case is resolved.

Q Do you ask for opinions from your attorney?

A Yes. Yes.

[211] Q Legal?

A Legal, yes.

Q Do you ask for analysis from your attorney?

A Yes.

Q The attorney that's representing the State Farm insured?

A We discuss the case, yes.

Q And has it been your practice, as a bodily injury claim representative, to impose upon the State Farm, the lawyer that State Farm hires for the insured, to impose upon that lawyer to do exactly what you think, and not to make any kind of independent judgment?

MR. CHRISTENSEN: Your Honor, I'm going to object to this. First, it's a line of leading. Secondly, this witness was designated as a rebuttal witness to Bruce Davis. We're getting far afield of that.

MR. SCHULTZ: This is probably the last question I'll ask.

THE COURT: Reframe it in a non-leading way.

MR. SCHULTZ: Okay.

Q (BY MR. SCHULTZ) Do you try to work with defense counsel to get their independent opinions?

A Always.

MR. SCHULTZ: That's all, Your Honor.

[212] MR. CHRISTENSEN: I should have objected sooner.

CROSS EXAMINATION BY MR. CHRISTENSEN:

Q You stated, I believe, just a few minutes ago that you weren't even familiar with the term "average paid cost" until these depos, or this proceeding.

A I was familiar with average paid cost on storm duty.

Q But didn't you testify a few minutes ago that that wasn't emphasized, you weren't even familiar with that term?

A In our daily business I am not familiarized with that term or do not use it. On storm duty it's a must that you have to use it. It's totally two different operations.

Q Now, we don't have your PP&Rs except the last few years, but this is one, it looks like signed by you here on the bottom. Is that your signature?

A Yes, it is.

Q And you signed it on December 10th, '93?

A Yes.

Q Do you have any idea how the term "average paid costs" got in there?

A Which portion?

[213] Q The one I've underlined.

MR. BELNAP: This is in the evaluation section of the PP&R from her supervisor?

THE WITNESS: I want to read the beginning first.

MR. CHRISTENSEN: I've covered the name. Let me do this.

THE WITNESS: Okay, ADR is alternative dispute resolution, which means it does not go to court, and you get an independent person to help you resolve those cases, yes.

MR. CHRISTENSEN: I know what ADR is.

MR. SCHULTZ: Let her answer the question.

MR. CHRISTENSEN: It's not responsive.

MR. SCHULTZ: She's trying.

THE WITNESS: That average paid cost is in relationship to the ADR.

Q (BY MR. CHRISTENSEN) Didn't you say you did not use that term, you weren't even familiar with its use in your regular daily business, only with storm duty?

A Yes, I said that.

Q And that's not storm duty, is it?

A No, it is not.

Q You're fifty-eight years of age?

[214] A Yes, I am.

Q You've been with State Farm seventeen years?

A Yes, I have.

Q Now, you've talked about some conversations you've had with Bruce Davis. Isn't it true that you have said that at your age in life you are concerned that you don't do anything

to upset State Farm. State Farm could hire two people for the salary you're getting, and you don't want to give them any excuse to fire you?

A I haven't ever said that.

Q You know that State Farm expects you to support the company here today, don't you?

A Sure. And I do support the company.

Q It is your testimony that in all your years at State Farm you've never treated anyone unfairly?

A Not intentionally have I treated them unfairly.

Q Well, and in your depo Sunday you said you hadn't done it at all?

A Yes, I read that, and it's a pretty strong --

Q That assumes just like the company line, doesn't it?

MR. SCHULTZ: Object, Your Honor, it's argumentative.

[215] THE COURT: Sustained.

Q (BY MR. CHRISTENSEN) You testified you've never tried to take advantage of anyone to pay less than full fair value.

A That's true. I don't --

Q You've never seen anybody do it, or even heard of it.

A I have never seen anybody take advantage of settling a claim, and I've never heard of it until Bruce Davis told me about storm.

Q And you have never actually paid less than full fair value?

A I have not paid less than full fair value of a claim.

Q And you've never heard of anyone else doing it.

A No.

Q Now, you deny that State Farm emphasizes appearance allowances. You claim they're rare, and you've only done it maybe once or twice in ten years.

A That's true.

Q And your testimony is there's no goals around appearance allowance.

A No, no goals as far as I'm concerned.

Q And it's your sworn testimony that State Farm [216] doesn't push the use of salvage parts; isn't that true?

A That is an area of an estimator. I don't have an ongoing communication with the property damage boss to know what they are pushing and not pushing.

Q You admit that giving insurance claims people incentives, having awards or recognitions or contests for paying less on claims would be improper.

A Yes.

Q You claim that State Farm doesn't do it.

A State Farm does not pay less than the fair.

Q Isn't that true? You claim they don't have contests.

A I call them promotions, not contests. A contest is when you are putting one against the other. A promotion is a promotion. I think all companies have those.

Q Let me refer you to page 10 of your deposition from Sunday.

A I don't have it.

Q Do you want to share mine? I'll let you look on mine.

MR. SCHULTZ: I've got one.

Q (BY MR. CHRISTENSEN) I asked you, beginning on line 16, "You're not aware of any contests or awards or recognitions that are given to claims representatives [217] relating to saving money on claims?"

And your answer was, "No," right?

A Yes.

Q Since then you've been told that we have a document that Samantha Bird gave us about pride week, and a competition dealing with cost savings in several areas.

A I have not seen that document. Samantha Bird was not in my area.

Q Was Ogden in your area?

A Ogden is in Utah.

Q This is September, '86, as far as pride month, "October pride month will have the following categories of competition." Doesn't that sound like a contest?

Mr. Humpherys just pointed out something to me, let me show you. Do you see where this meeting was held? Is that where you work?

A Yes, I do.

Q You worked there in September of 1986?

A Yes, I did.

Q Now, doesn't this sound like a contest to you?

A That was a management meeting, and I'm not management, so I'm not familiar with what's in there.

[218] Q You don't have a clue about Ogden and Orem's offices competing against each other?

A I did not.

Q Did you miss pride month in '86?

A I may have. I may have been on storm. I don't know.

Q You may have been gone the whole month?

A I do go the whole month. Sometimes I go two.

Q Here again, we've got Ogden and Orem competing, and the areas of competition are on cost savings, aren't they?

A That is not in my area of claims handling.

Q But you testified that State Farm doesn't have contests.

A I did.

Q You were wrong, weren't you?

A I guess, if that's what you're considering those.

Q Now, were you gone for a whole month two years in a row?

A Yes.

Q So you think you were also gone in August of 1987?

A Sir, I can't remember August of 1987.

Q Well, let me show you another pride month.

[219] It looks like there's becoming quite a rivalry between Orem and Ogden in competition. Do you see that?

A "Orem will compete with Ogden. The following categories have been established for competition, as well as awards."

Q Do you see down here, estimatics, a $50 dinner. One award for the state will be given to the estimator who effects the highest cost savings on appearance allowance, quality replacement part, equivalent part estimates."

A It says that, but I'm not an estimator so I was not aware of that.

Q Yet you worked in the Ogden office, and you didn't have a clue that this was part of pride month?

A I did not.

Q Is any part of this contest in your area?

A Agency referrals would be in my area.

Q Mr. Davis was telling the truth about contests, wasn't he?

A No, he was not. He was using the word "contest" to take advantage of the people. That, from what I saw on the board, was not to take advantage of our customers.

Q You said there weren't contests, period, didn't you?

[220] A Yes, I did.

Q As far as you know, at least your sworn testimony Sunday was, as far as you know Bruce Davis had done a good job in Pueblo?

A As far as I knew, I didn't hear anything negative.

Q And you've not known Bruce Davis to be dishonest, have you?

A No.

Q And you don't have your PP&Rs from back when, the time frame Mr. Davis was working for State Farm.

A No.

Q If we had those, they'd look a lot like his, wouldn't you think?

A I don't think they would. He was an estimator, I'm a claim representative. We have different job descriptions.

Q Storm duty would be a golden opportunity for State Farm to save a lot of money in a short amount of time by using appearance allowance, wouldn't it?

A No, it would not.

Q It was used on storm duty.

A What storm duty are you talking about?

Q The one in Pueblo, Colorado, that Bruce Davis and you were on?

[221] A If -- I can't recall if it was or wasn't. It's not normal practice to use appearance allowances.

Q I think Mr. Norman confirmed it was used.

A Since I have been boss in '87 we rarely use appearance allowances.

Q So you don't remember if appearance allowance was used or not used?

A If they said it was used, it was probably used.

Q You testified neighbors talked to each other if you're going to --

A I did not testify neighbors stalk each other.

Q Talk to each other.

A Right.

Q Isn't that how you explained "neighborritis"?

A Yes.

Q So if you're going to give one neighbor appearance allowance, you'd better give it to them all, right?

A No.

Q Now, you claimed State Farm doesn't discriminate against women?

A No. It does not discriminate against women. State Farm does not discriminate against women.

Q Are you aware that State Farm has had major [222] lawsuits --

MR. SCHULTZ: Your Honor, we have had a bench conference about this before, we've objected to it.

MR. CHRISTENSEN: That was the other witness. I think this is fair game.

THE COURT: Let's approach the bench, let's see where we're going.

(Side bar conference held out of the hearing of the jury.)

THE COURT: Objection sustained.

MR. CHRISTENSEN: That's all the questions I have.

MR. HANNI: You should have objected sooner.

MR. CHRISTENSEN: It works.

MR. SCHULTZ: I'll remember that next time.

REDIRECT EXAMINATION BY MR. SCHULTZ:

Q Ms. Smith, you said that you do support the company that you work for; is that true?

A I sure do.

Q Are you here to lie under oath?

A No, I'm not.

Q You were shown one page out of your 1992 PP&R. That, on the back page, in one paragraph, on one line, had the words "average paid costs." Do you see [223] that? Right here?

A Okay, yes.

Q Now, what part of the PP&R is this? What page is it?

A Summary evaluation.

Q Is that something that you fill out yourself?

A No.

Q Who fills that out?

A My boss.

Q And the goals, the actual goals are on the other pages.

A Yes.

Q Do you want to look through there and see if there's any goal about reducing average paid cost per claim?

A I don't see any, sir.

Q Now, at what point in time do you sign this last page?

A When it goes -- When it comes back from my boss' boss, I believe.

Q Okay.

A No, I believe it's before it goes in. I don't know.

Q Do you sign it -- Do you know whether you sign it before the summary evaluation is on the sheet?

[224] A No.

Q You do, or you don't?

A No, I don't sign it before the summary sheet.

Q Okay. So when you sign it, the summary is not typed up and on there?

A It's on there. Everything's on there.

Q Okay. Now, you were shown part of a memo regarding a pride month where some $50 dinners were said to be given?

A Yes.

Q Do you defraud and cheat people so you can get a $50 dinner?

A No, I do not. That would be --

Q You were asked whether you thought Bruce Davis, whether you were aware of whether he was dishonest back at the time of the 1981 Pueblo storm duty.

A Yes.

Q He never told you that he was doing anything dishonest, did he?

A No, he did not.

Q Have you known Bruce Davis to have quite an imagination?

A Extremely.

MR. SCHULTZ: That's all, Your Honor.

* * * *

EXCERPTS OF TRIAL TESTIMONY OF JERRY L. STEVENSON, JULY 25, 1996

[Vol. 29, R. 10284, commencing at p. 6]

* * *

JERRY L. STEVENSON called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. BELNAP:

* * *

Q I'm pleased to say that, subject to some matters we need to discuss with the court, we're on our last three witnesses for the defense.

Mr. Stevenson, now that you've taken an oath, will you please tell us what your full name is.

A Jerry Lee Stevenson.

* * *

[7] * * *

Q Mr. Stevenson, are you employed?

A I am.

Q Who do you work for?

A For State Farm Insurance.

Q And when did you start working for State Farm?

A I started in June of 1964.

Q And you've been working continuously since then?

A I have.

Q What office do you currently work in?

A In Centerville, Utah.

Q Mr. Stevenson, when you went to work for State Farm in 1964, what was your first position with the company?

A I started as a field claim representative, handling bodily injury claims.

Q And did you take and go through some training with the company during that process?

A I did.

Q And have you had subsequent training?

A I would say yes to that.

Q And Mr. Stevenson, in 1983, February, were you given a transfer from the Salt Lake office to the [8] Ogden office?

A Yes.

Q Now, in Salt Lake, were you acting as a claim superintendent?

A I was.

Q And then transferred to Ogden in what position in February of '83?

A February 28th of 1983, I transferred to the same position as claim superintendent in the Ogden office.

Q Now, we know, from being involved in this case, that the Campbell case was one of the cases pending in the Ogden office at the time you took over in February of 1983; is that correct?

A That's correct.

Q Now, during the first thirty or sixty days that you were there after getting your feet on the ground, so to speak, did you have an opportunity to review the basics of that file so that you had an understanding, basically, of what it was about?

A I've tried to place that time exactly, but it would have been within the first thirty to sixty days that I was there reading and getting a basic understanding of that Campbell file, yes.

Q Now, do you now know from reviewing [9] things -- and perhaps you recalled then, but I realize that's been a number of years ago -- but did you also serve on a claim committee when that file was reviewed by a number of claim manager people at State Farm in the 1981 time period?

A I did.

* * *

[19] * * *

Q All right. During the course of your handling of this case and working on it, Mr. Stevenson, did you ever, as you approached this case and attempted to make decisions based on the information you had from your experience, did you ever intend to make decisions in a way that would harm Mr. Campbell?

A That wouldn't be intent with any policy holder, to harm them. In this case there was never any intention to harm or injure Mr. Campbell in any manner, to provide for him good protection in the policy that he'd purchased, and that was my goal with him, as well as all the other policy holders that I work in behalf of.

Q In the decision that you made to take this case to trial in September of 1983, did you try to -- Let me rephrase that. Can you tell the jury if you used the basis of your judgment and experience and your knowledge of the accident in trying to come to a correct judgment about whether this case should be tried?

[20] MR. HUMPHERYS: Your Honor, he's still leading.

THE COURT: Sustained.

Q (BY MR. BELNAP) Tell the jury what judgment processes you went through in trying to make a decision as to whether or not this case should be tried.

A Well, maybe I would want to first answer that by saying -- And this wasn't the only case that went to trial in the time that I was superintendent. There were other cases.

But I would like to say that I really didn't decide to take this case to trial, Mr. Belnap. And I would want to, the jury to know that that decision in this case, as well as in many other cases that I've worked on, from investigation or as a superintendent, that the facts of the accident determine whether a case is going to be tried or not.

On this case, it was a complex case. It wasn't easy, and there were other complex cases too. This isn't just the only one. And the easiest thing on this one, or other complex cases, or any other cases, would be just to step back and pay the case. But in good conscience.

This case, as well as many others I have worked on, I couldn't do that, because the facts that [21] were coming in, the facts of the accident, starting with Mr. Campbell and Mrs. Campbell and what they were telling about the accident and how it happened, and that was very influential.

But that wasn't the only thing. I've been through that a lot of times with policy holders who are involved, because they're in that accident. And they're emotionally involved. But I viewed very carefully what Mr. and Mrs. Campbell were saying. I looked very closely at Trooper Parker, what he'd done in his investigation of the physical facts of that accident, being right to the accident scene and going back the following day to confirm. I respected him, and I really did expect that from him, with twelve or thirteen years' experience as a trooper, to confirm what he'd found that night, and what he'd gone through in a good investigation.

I was -- I looked closely at what he reported, that he listened to Mr. Slusher say in the hospital about Mr. Campbell not being the northbound car, Mr. Campbell not causing that accident, or causing the smaller car, Mr. Ospital's, to go off the road. I felt that was a very important part.

I looked at Mr. Dahle, who we engaged as a reconstructionist. But I also looked at the fact that [22] he'd been to that accident scene, I believe the next day after, the next morning after the accident, and that he had gone over the investigation by Trooper Parker, and that he'd looked himself at what happened and looked at the physical facts.

I also had had experience, a good deal, in working with Mr. Bennett. Mr. Bennett had been an attorney on many other cases that I'd investigated as a claim representative, or other cases, as a superintendent. And I'm trying to think of those others as a superintendent. But I know I'd had much experience with him as a field claim representative, cases that had gone to trial that I'd investigated.

And I was also impressed by one last thing that comes to my mind, and this has stayed with me all through those years. I was greatly impressed by Dr. Palmer, who is a practicing dentist in Farmington, Utah, who said he arrived at that accident scene, he was the first car that pulled up behind the accident, and so in my mind he wasn't far away from that accident occurring. And he got out to offer assistance, because he could see the kind of accident it was.

But the thing that impressed me about Dr. Palmer was he related, after the trooper, or the investigating officers arrived and were taking charge of [23] the injured and so on, the people were coming back behind the accident, back to where he was, and he was referring to the van drivers, or passengers in the vans that were coming back there, and he referred and said very strongly, he stood there and listened to what they were saying about the accident.

And he said one of the van drivers or passengers would say, "This is how the accident happened," and somebody else in that caravan, the van drivers would say, "No, that's not how it happened." And then the other person would say, "Oh, it happened that way?"

And they were now listening to what they'd already said how it happened, but they were hearing van drivers saying it happened a different way. And Dr. Palmer said, "I was amazed at the stories that was coming from those people." And he was standing there listening to that.

And Mr. Belnap, I quite lengthily answered that, but those are the things that influenced me in making a decision. And as I said, I really didn't make a decision to try this case. The facts that were coming in on that case made the decision.

* * *

[26] * * *

Q Mr. Stevenson, understanding the judgments, [27] that you've explained to the jury, that you made, and understanding the result of the trial in Logan where the jury disagreed with the assessment that you had made based on the facts, do you understand, one way or the other, whether or not, based upon that decision, whether a mistake or an error in judgment was made, based upon their view versus yours?

A Well, I can look back at it today and say -- I don't like to say that it's a mistake, Mr. Belnap, but I accept the fact that that's what the jury decided. As I look back at it today, I can recognize and see that.

At the time the decision was made, and perhaps even when that verdict from the jury came in, I felt very strongly, and I still feel very strongly today, on the evidence that was there. But I'll say that living to the years that I have, I've learned that I make mistakes. And if I made a mistake in that, I'll recognize and say, "Sure, I made a mistake."

But I'll tell you again that I used all the best judgment of many years of investigation and training that I had to not make a mistake on that in taking that case to trial. The jury made their decision, and I can accept that.

* * *

[29] * * *

Q Did you become aware, Mr. Stevenson, if, in the course of discussions that Mr. Bennett had, or that Mr. Campbell's other lawyers were involved in, whether or not any communication was received from the attorney for Slusher concerning whether or not a bond would be necessary with respect to his clients' judgment?

A Mr. Belnap, could you ask me that again, please?

Q Yeah. Let me represent to you, and I can get a poster that we had on this that there's, I believe it's a March 13th, 1984 letter from Mr. Barrett to Mr. Hoggan's firm saying that a bond would not be necessary, and they were going to sit on the judgment and let it collect interest at 12 percent.

I also want to ask you, Mr. Stevenson, if you became aware in approximately May of 1984, if you provided any correspondence to Mr. Humpherys about the necessity of a bond, or if you provided that correspondence through Mr. Hanni?

[30] A I did.

MR. HUMPHERYS: Your Honor, he's still leading, and I think we're entitled to this.

MR. BELNAP: I can put the letter up, Your Honor. This is just a format.

MR. HUMPHERYS: The problem is, he gives what he wants, and then there's an objection, and then he asks the question, and it's too late. He should not be asking the leading questions.

THE COURT: Proceed by non-leading questions from here on.

Q (BY MR. BELNAP) Mr. Stevenson, let me show you a letter, March 13th, 1984, that I referred to that indicates, "We've made no effort to collect, and although no bond has been filed, we've more or less decided that since the judgment

bears interest at 12 percent we will not pursue any garnishment against State Farm for the policy limits pending the appeal."

A Okay. And that letter's familiar with me.

Q Okay.

A Not one that I can call right out because of the large amount of things, but yeah, I've seen that letter.

Q All right. Mr. Stevenson, while I'm looking for this letter, are you aware whether or not a letter [31] was written at any time by yourself addressing whether or not a bond would be necessary for the Ospital judgment, or any of the judgments?

A Well, I remember a letter that I'd written to Mr. Humpherys. The exact content of that, I'm trying to recall that, Mr. Bennett, but it's not -- or Mr. Belnap -- but it's not coming right back. But I remember a letter to Mr. Humpherys, yes.

Q Okay. Let me move on and ask Mr. Schultz if he can help me find that so we don't drag, here.

While we're looking for that letter, can you just tell us what your understanding resulted in, in terms of whether or not a bond was going to be necessary?

A Well, my understanding of that was -- and you've already, we've already discussed part of that -- and that is that the judgments were not entered until November of '83, mid-November, into the first part of December of 1983, and that Mr. Hoggan, the attorney for Mr. Campbell, was advising him that there wasn't going to be any movement on those judgments until they were entered.

And then my remembrance is there was discussion going on between Mr. Hoggan, who was the personal attorney for the Campbells, and between the [32] Slushers' and Ospitals' attorneys, that there wouldn't be need for worry of movement on the assets of Mr. Campbell.

And somewhere, and I want to say January, but sometime in 1984, and fairly early 1984, there was agreement that there wouldn't be need for supersedeas bond. And I'm sorry to kind of jump and try to remember some exact dates, but those are the best ones I can remember.

* * *

[33] * * *

Q Now, during that time period in the offices that you were located in, Mr. Stevenson, do you believe you would have been aware if there had ever been an excess judgment against a State Farm insured in the offices involving the cases that were processed, tried, and handled in those offices during that '64 to 1983 time period?

A I believe that I would have been aware, yes. [34] Either through other claim representatives that I was working with, or the management people that I worked closely with, I would have been aware of.

Q And do you recall there being any cases that resulted in excess judgments during that time period before the Campbell case, in the offices that you were working in?

A I knew of no others, no.

Q Let me come back to a question that I'd asked you, Mr. Stevenson. Do you recall whether or not you became aware of a May 9th, 1984 letter from Mr. Humpherys to Mr. Hanni?

A I remember this one, yes. I would have to read and refresh my memory, but I remember that letter.

Q Okay. And does that letter talk about the necessity of a bond?

A I haven't scanned that.

Q Why don't you go ahead and take a moment to read that.

A It does refer to the supersedeas bond.

Q And what was your understanding of whether or not a bond would be required, based upon that letter?

A My understanding on this letter was that a bond would not be required. The supersedeas bond would not be required.

* * *

[36] * * *

Q Mr. Stevenson, I want to go to a different subject for a moment. Are you familiar with the PP&R [37] program?

A I am.

Q Okay. Now, let me put up on the screen one of your PP&Rs from 1981 to 1982. And this was before you became a claim superintendent; is that right? That may be hard to see, but it talks about the fact that you're a field claim specialist?

A That's true. I'm hesitating, again, trying to get a date in my mind, but it seemed like I became a superintendent in 1981, and this would be made up while I was still a field claim specialist, prior to becoming a superintendent. But I think later in that year I did become a superintendent.

Q Now, in regard to this, Mr. Stevenson, it talks about "maintaining A and U costs at below maximum goals of $4,200 and $3,000 during 1981, but striving for at least six first-call A or U settlements per quarter, and keeping track of these claims."

Now, with respect to that goal, on the other side it says, "Records not kept, but first calls have increased." Can you tell the jury what a first call is that's being referenced?

A Well, a first-call settlement that is referenced there is -- and I've already referred to that in one way, but I didn't call it a first call [38] settlement. First-call settlement is doing the investigation very promptly of the accident, and then going to a person who's involved in the accident, and making a settlement

of their claim, which you can't do unless you've investigated that, or if you've lightly investigated. It's not fair to State Farm or to the person that you're working with.

So first-call settlement would be going to a person involved in the accident, having the facts that you've gathered -- I've previously mentioned how I did that -- and seeing if they were ready to settle their claim, if it was time to settle their claim.

Q Now, if you got there on your first meeting, what if you determined that it appeared that they were still under treatment, or weren't ready to settle? What would you do?

A That's not the time to make a first-call settlement. People are not ready, and I'm not interested in trying to talk them into being ready. I want to be ready when they are.

Q All right. Now, with respect to this goal, Mr. Stevenson, did you ever pay, or attempt to pay less on any particular claim because you had listed that goal?

A Well, I --

[39] Q On a particular claim.

A I doubt that I knew that number in approaching my claims. I've never tried to reduce a claim. I look at a claim for what the value is, and that's what that claim is paid, not because of a number that's written down.

Q Now, Mr. Stevenson, let me put another PP&R up on the board. This is January, 1982 to '83. Is this when you're a superintendent down in Salt Lake?

A Yes.

Q And you indicate that you're going to work on some efficiency with some meetings and training, and some management development training with people that you're working at, or working with? Excuse me.

A I see that, uh-huh.

Q And it goes on to provide that you'll have some goals with respect to agency and service center operation, personal goals, and then at the bottom, effective cost controls.

Now, as a superintendent, were you responsible for the operation of part of the business with respect to the people that you were supervising, including costs and overhead, that kind of thing?

A I was responsible for some costs, yes.

Q Was there anything about these goals, in [40] paragraph 6, on Bates number 06077, that caused you, or any of the people that you were supervising, to handle claims, or pay less on any claim?

A The goals that are written there, Mr. Belnap, nor any goal that I've ever had, has never influenced me, nor have I trained people to pay less than the fair value on a claim.

Q Now, this PP&R, this has been filled out just before, a couple of months before you went to Ogden as the superintendent up there? December, '82 to December, '83?

A That's probably right. Those dates would fit about there.

Q Okay. And you're talking about some efficiency and effectiveness goals, are you?

A I see that, uh-huh.

Q And continuing, talking about some training and some development, training of people that you're working with?

A That -- And I haven't scanned that. The thing that catches my attention there, and I have to say this, and that is there's some black lines in there, and I would -- Anyone looking at that, I understand those, that's a highlighter that's gone over, and probably a yellow color, to highlight some things. There's not [41] anything crossed out on my goals. The original would have yellow over those.

Q Those are names that are --

MR. HUMPHERYS: So we can clarify it, these were redacted. These were not yellow highlights.

MR. BELNAP: We made these available to Mr. Humpherys before redacting out names of individuals.

THE WITNESS: Okay. In answer to your original question, yes, I'd go down and see those kind of goals on there, yes.

Q (BY MR. BELNAP) Is there anything about those goals that you have a belief would cause you, or anyone else that you were supervising, to pay less on any claims, than the range of their value?

A No. Certainly not.

Q Let me put up a third page of that. This has some cost control, early settlements, use of stipulations. What does that mean, Mr. Stevenson?

A That means a lawsuit has been filed, a claim representative makes contact with the plaintiff attorney to talk to that, to ask that plaintiff attorney if he wants to give him an open stipulation so that the summons and complaint that has been filed does not have to be answered. And during that time, where the complaint is not answered, that there's ongoing [42] discussion between the plaintiff attorney and the claim representative representing State Farm, to see if that case can be settled.

And sometimes the plaintiff attorney was happily willing to give that, and sometimes he wasn't. That's a stipulation, or an open stipulation, so you don't have to answer the summons and complaint.

Q All right. And then it goes down and talks about some other methods of negotiation, and interim billing with attorneys. Then it talks about decreasing lawsuits from seventy-four to fifty. Is that the same thing as decreasing pendings?

A Lawsuits would be part of pendings, yeah, that's the same thing.

Q In your experience as a person that's investigated, handled, and supervised claims, what success can you have in reducing pendings if you're not attempting to pay in the fair range of value for the cases?

A Boy, lots of years, I've learned and seen that the pendings will increase in that instance. The pendings go up.

Q Is there anything in these goals, Mr. Stevenson, where you're indicating that yourself or anybody that you're supervising are planning on trying [43] to treat people unfairly?

A Nothing in there, no.

Q And do you believe you've ever had such a goal that was intending to do that, Mr. Stevenson?

A Never.

Q Now, with respect to the PP&R that was in place the year that this Campbell case was tried, I want to just put that up on the board quickly. Is there anything on the first page that talks about treating people unfairly?

A I see training, improvement. Training again. I don't see anything there on unfairness, no.

Q Let me put up the next page. It talks about some videos that you're going to use, some seminars, some office efficiency. Down on office efficiency, is that "PPE," is that policies per employee?

A That's right, that's State Farm's shortness for policies per employee.

Q And are you attempting to determine how to properly staff the number of people that are working claims?

A That gives you a general guideline number to know how many claims are being handled by how many claim representatives, yes. It gives you some help in staffing.

[44] Q I'm going to skip a page and go to the last page of the PP&R for the year that you were supervising this Campbell file and went to trial. There's a section there that says, "Monitor unit cost goals, reduce suit count from fifty to forty by the end of '83 by pushing defense attorneys for early trial settings on defense files, work with the FCRs --" That's the claim representatives?

A Yes, claim representative, field claim representative.

Q "-- on earlier contacts and settlements." What are you trying to say there, Mr. Stevenson?

A Well, I think I've referred to that previously, and that is there's a great benefit, and I think the greatest one is those people who have been involved in an accident, to get out and help them as soon as possible to answer their questions and help them. And so that's talking about making contacts with those people early.

Q And in terms of expenses, you're going to monitor your expense accounts, mileage, phone expense. Is there anything on this goal of your PP&R for the year 1983, Mr. Stevenson, where you had planned to, yourself, or through anyone that you were supervising, to have a goal to treat people unfairly, or not pay within the [45] range of value?

A No. We've not done that, I've not trained people to do that, no.

Q Have you ever been instructed, or trained to alter or destroy a claim file so that it does not have the information in it that would set forth the decisions and the factors that had been compiled in that claim during its handling?

A That's an easy answer, Mr. Belnap. No, I've never been instructed or trained that way.

Q Now, during your time at State Farm, can you tell us what your practice was with respect to keeping up your manuals and materials that you were using, as manuals progressed and were updated?

A New material would come in, and I learned early on, and probably somebody trained me on this, or maybe it's just something I taught myself, but I learned early on, when new material came in, that was the time to update and put that material in the manual where it should go. Not to set it aside and discover it a few weeks later, but to put it in right then. And I did. I inserted those updates and material that was coming in, keeping as current, promptly.

Q Now, in April of 1990, did you work with Samantha Bird?

[46] A And tell me the date, again?

Q April of 1990?

A Yes, April of 1990, I did.

Q Now, the jury's seen an E-mail memo that Samantha Bird prepared and sent to a number of individuals, including yourself, about a meeting that she was at with a Janet Cammack. Do you have a recollection, Mr. Stevenson of whether or not, in the spring of 1990, you were told to destroy materials so that they wouldn't be available to be asked for in litigation?

A I don't remember in the spring of 1990 being told to destroy anything relating to litigation, or anything that was pertinent and needed to be kept. I've not been told that any time.

Q Now, in the course of handling of a State Farm file -- we've had some files out last week with some witnesses -- and is there, in the handling of a case where you have an out-of-town office, like a Logan office that's being supervised by another office, like in Ogden, was there a process back at this time period known as having a master file and a field file?

A Yes, there was.

Q And I believe that there was introduced, or marked as Exhibit 19 in the trial last fall, a memo [47] talking about the person in Logan in October of 1982, reporting to Mr. Noxon that, "I have purged the file and closed it," from Jim Chambers to Mr. Noxon.

Can you tell this jury what that would mean, if you have an understanding, from your experience at State Farm?

A I do have a very good understanding of that. I've heard that many times. I've said that many times. And that means, in our handling of claims, in this case Jim Chambers, the

field claim representative in Logan, Utah, a small office, had a field file, and he reported to a superintendent in Ogden office that had a master file.

And the memo is telling Jim Chambers, the field claim representative, if he hasn't already sent all the original investigative material, which he probably already had, or anything that needed to come out of his field file, if he hadn't already sent that, to purge that material out of his field file and send that to the master file. I've been -- I understand that completely. That's exactly what it meant.

Q Does that have anything to do with destroying documents so they're not available to be seen?

A It has nothing to do with the destroying of documents.

[48]Q Have you ever used, or been trained in the use of the Excess Liability Handbook that's been marked as an exhibit in this case?

A I haven't seen the excess handbook, Excess Liability Handbook, and I've not been trained in uses of that. I've heard of things that it's contained in the last year or thereabouts, but I've not seen it, nor do I use that, or have I ever used it.

Q Mr. Stevenson, was there a time while you were a claim superintendent, where there was a program used, or referred to as pride month?

A There was, yes.

Q And there's been shown to the jury, and some witnesses have been asked about pride month. And I want to show you a document that's been shown to the jury, which is Bates stamped number 012 through 015, and I specifically want to refer you to page 3 of that document, which is dated -- Can you give me a date on the first page?

A Let's see, the date of this is September 27, 1988, it looks like the date that it was typed. It's referring to a September 19th, 19 --

Q I think that's '86?

A Excuse me, it's light, it is '86. It's referring to a meeting of September 19, 1986.

[49] Q And on the third page of that document, is there a reference to the fact that there's going to be some dinners awarded between the value of fifteen and $25 for different activities during pride month?

A Well, I see the reference to a dinner. I don't see dinners, but I see reference to a dinner of a $25 value, yes.

Q And is one of the categories that's referred to, I think three or four items down, that one of the categories that will be looked at during that pride month is dealing with estimatics, appearance allowances, recycled parts, and after market?

A I see that, yes, uh-huh.

Q Can you tell the jury what your understanding was with respect to those items, whether or not, as a superintendent of the Ogden office that was going to be involved in pride month, what you were going to expect of your employees with respect to the handling of property damage issues, particularly?

A I can refer to that, even though I'm not an expert. I had an assistant at that time, or a supervisor who worked more closely with property damage issues and items. But I was aware of this, and so I can easily say that the items that were being worked with would be our estimators who were actually looking at [50] damaged vehicles, in giving them the opportunity to explain to people about appearance allowance, or about an after-market part, or about salvage parts. Those were the things that were listed, here under estimatics, that our estimators would be working with and making people aware of during pride month.

MR. BELNAP: That's all the questions I have, Your Honor.

* * *

CROSS EXAMINATION BY MR. HUMPHERYS:

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[51] * * *

Q If an attorney were to tell you, if a defense counsel were to tell you that there was a substantial likelihood that an excess verdict would be rendered, you would certainly listen to that, wouldn't you?

A I'd have to have more information than just having him tell me that. I'd have to have him tell me the whys of that, and I'd want to listen to what his explanation was, rather than just saying that. And then I'd want to explore that myself.

Q I appreciate that, we all want to look at the information that is available to us. But are you aware that one of the grounds for bad faith is failing to follow the recommendations of defense counsel?

A That probably -- I'd have to have that document in front of me. It very possibly says that, and probably does.

Q What I'm asking you, isn't it true? I'm not asking you to pinpoint something in a manual and say, "Isn't it true that one of the hallmarks of an insurance company that fails to follow the recommendations of their defense counsel?"

A My answer to that, I guess, again, would have [52] to be they would want to follow what their defense counsel said, but would want to explore why he was saying that, and have the information in detail, and even explore that myself.

Q Well, let's just make sure we have an understanding of that. Let me show you what's been previously marked as Exhibit 21. Now, you've worked for the fire company from time to time in settling claims, haven't you?

A And could you ask me that again? I missed a word in there. I've worked for the fire company, did you say?

Q In settling claims. Fire company claims.

A I've settled a few fire company claims. I've never worked for the fire company, no.

Q You recall in your PP&Rs where there's discussion about how you are to be trained in settling fire claims, assist in settling fire claims?

A That's not my remembrance.

Q I'll point some of those out to you. Are you saying it's not in there, or you just --

A That exact language I don't believe was in there. I've settled claims for the fire company, but being trained in their procedures and so on, I don't remember that, no.

[53] Q We'll look at that in a minute. Do you see, here, under the heading, "Excess Liability Procedure," on page 17.

MR. BELNAP: Is this from --

MR. HUMPHERYS: This is from the Excess Liability Handbook.

MR. BELNAP: So we can identify the document, can you pull that down just for a moment, Your Honor?

MR. HUMPHERYS: You bet. Back in 1970.

MR. BELNAP: 0-13, page 1 from the operation guide section?

MR. HUMPHERYS: That's right.

MR. BELNAP: Thank you.

Q (BY MR. HUMPHERYS) Let's read right here. "Disregarding the recommendations of our trial attorney. We do not wish the trial attorney to make dollar evaluations of any particular claim in the file. We would prefer that he state the legal theories of defense, the testimony of each of the witnesses, analysis of how each witness impressed him, and leave the dollar evaluation to us. We do not want him to express a percentage evaluation of our chances of success."

Now, I can show you the next page, but let me just -- Well, let me have you -- Well, let me back up [54] and just ask you. You agree, don't you, that failing to follow the recommendations of your defense counsel would be a serious matter, and would be an indication that you had perhaps breached your implied duties of good faith and fair dealing.

A I'd have to answer that this way. I'm not familiar with what is up there on the screen. That's completely foreign to me. In answering your question, I would just have to, again, say I listen very closely to our defense counsel. And if they have something that they want to tell me, I will listen to that very closely.

But I also feel an independent duty to do my homework, or already having my homework done, to evaluate what's being told to me. Yes, I'd listen very closely to counsel, and do exactly what I've said a couple or three times, here.

Q All right, then let me ask you again. If defense counsel had indicated to you that in his best judgment the facts of the case would indicate a substantial likelihood of an excess verdict being rendered against the insured, and you had an opportunity to settle the case within the limits, you would certainly try and do it, wouldn't you?

A Gosh, my answer on that, again, would be I [55] would look at those circumstances, listening again closely to our defense counsel, but see why he was telling me.

Q Mr. Stevenson, have you ever not followed the recommendation of your defense counsel, and refused to settle when he recommended settlement?

A That's a hard one for me to pull out.

Q Well, I'm just asking you. Do you remember a single time in your entire career where you have refused to settle when your defense attorney has said it's a good idea, "We'd better try and settle this"?

A I believe there are times that, and I'll strike the "believe," I know there are times that I've had discussions with defense attorneys who have represented State Farm, and that I've been working with on a case, and they've given me an opinion, and I've wanted to explore and know more about their opinion.

I'm trying to think of an exact case where I -- I've had discussions with them where I haven't always agreed with them, nor they've agreed with me, but I'm not able to go to a specific case and say I went ahead and settled that. That's hard for me to remember.

Q All right. But you don't recall a single time, do you, where your defense counsel has recommended settlement, when you have said, "No, we are not going [56] to"?

A I still have to answer it the same way. I just can't see anything different.

Q You don't remember a single one. What about where defense counsel has indicated to you, "We recommend settling because there will be an excess verdict, a likelihood of an excess verdict against our insured if we don't," and you have refused to settle? Have you done any of those?

A I don't remember any of those, no.

* * *

[60] * * *

Q All right. Now, I think when we had your deposition we talked about what was in the Campbell file and what wasn't. And I asked you whether you found any deficiencies in the file, and I think you said not; is that correct?

A That would be my general remembrance, yes.

Q Then I asked you if you had seen any of the reports by Dr. Watkins, Reynold Watkins, or Newell Knight in the file. You answered no, there was none; is [61] that correct?

A Well, we'd requested those, I believe through the attorneys representing, and we'd not received those, no.

Q You hadn't received any of the expert reports, right?

A Well, we had received in one way, and that would be a letter from you, Mr. Humpherys, in which you offered the opinions of Mr. Watkins, the expert.

Q Okay. So, but that was the only information you had that there were experts being retained on the other side, right?

A As I said, we'd requested that, but not received it from you, no.

Q Well, I'd like -- You said you requested. I would like you to show me anywhere in your claim file where you requested that information. Here's your original field file, and I'll give you your original claim file.

You show me anywhere in there where you requested the information regarding those experts. I'm very curious about that, because I know of none, Mr. Stevenson. Here's your claim file, there's the field file. Find me anywhere in there where you requested information about those two experts.

[62] A It would seem, in my memory, in correspondence from our defense attorney, which is State Farm, our defense attorney representing us, there's a request made of that. And I can go through that, Mr. Humpherys.

Q I would like you to, because I've never seen one. Would you please find one request regarding the information about Reynold Watkins' report, or Newell Knight's report.

A Well, it would take me a few hours, and I'd be happy to do that if the court would like me to do that.

Q I would request that you do that and come back and testify.

A It seems like -- Excuse me. It seems like there's a request from Mr. Humpherys, or from Mr. Bennett for that information, and we have not received it.

Q There was a request that -- Well, you go ahead. I'd love to have you find that for us.

Now, isn't it typical that you find, and you obtain expert reports before you go to trial? The opposing expert reports. That's typical, isn't it?

A That would seem generally typical, which we didn't receive in this case.

[63] Q And you were also, you also recognize that to properly evaluate liability you need those reports to evaluate the substance of what's being said, both what they are saying about their own opinions, as well as how they are attacking your expert, right?

A That information would be helpful.

Q All right. And, in fact, it's very difficult to evaluate liability without having a full picture of the adverse evidence, as well as the supporting evidence, isn't it?

A Adverse evidence is part of that evaluation. I don't know that it's -- When you say very difficult, I believe that's part of the formula, yes. Part of the information that's needed.

Q Do you recall testifying to me, or testifying earlier in a deposition, in answer to one of my questions, that it was important to have these expert reports to objectively evaluate a claim?

A Remembering my words, I may have said important, but I doubt that I said difficult.

Q Okay, I don't want to play word games with you.

A Well, okay.

Q All right. And yet there were no reports of Mr. Knight and Mr. Watkins in your file, correct, before [64] the verdict?

A I don't remember a report, other than a letter from you, Mr. Humpherys, giving us the opinions of Mr. Watkins.

Q And do you recall that I asked you why you didn't have those reports in your claim file, and you said, "I don't know why." Do you remember that?

A That's probably my answer.

Q Well, would you like to look that up so that we can -- Let's look that up. This is on page 99 of your deposition. Starting on line 14. "Is it your normal practice, Mr. Stevenson --

MR. BELNAP: Counsel, can you give me just a second?

MR. HUMPHERYS: You bet. Page 99.

MR. BELNAP: Which line?

MR. HUMPHERYS: Line 14, page 99.

MR. BELNAP: Thank you.

Q (BY MR. HUMPHERYS) Is it your normal practice, Mr. Stevenson, to go into a critical case, or a serious case, where there is potential excess exposure to the insured, and not request copies of any of the expert reports, or not had them available to you?"

Your answer was, "That wouldn't be normal practice, no."

[65] Then my question was, "Do you know why, in this case, you made no effort to find out the expert reports?"

Would you read your answer?

A And my answer, "I can't answer that, I don't know why."

* * *

[78] Q Can you remember a specific instance where you refused to settle within the limits I described to you just before your answer?

A I don't know that I can go to a specific instance. Thirty-three years.

Q In fact, you've settled many of them when there have been demands made, haven't you?

A Pardon me?

Q You have settled many within the policy limits when personal attorneys of the insureds have made demand on State Farm to settle within the limits, haven't you?

A I don't know that I could state many. I've settled those, yes. But there are the other factors that I've mentioned that have been weighed, not just on that independently.

* * *

[88] * * *

Q Okay. You acknowledge, don't you, Mr. Stevenson, and I think you did in your deposition, that an excess verdict can be very traumatic on an individual.

A Oh, it would surprise me that there wouldn't be trauma to an excess verdict for any individual.

Q And the longer that potential excess verdict lasts, the fear of exposure, the worse the trauma. [89] You'd agree with that, wouldn't you?

A I couldn't comment on that. I think it comes to the makeup of how each individual handles stress and trauma. Some handle it very well and go on with life, and others for varying degrees of that.

Q Do you recall telling me in your deposition that the longer it would go, the more the trauma? Would you like to look at that, or --

A I would have to say I may have said that. I'm not able to independently recall everything I said in that deposition.

Q Okay, let's look at your deposition, then, on page 121. Here on line 18. "The longer it is, the more traumatic it is for them. You would agree with that?"

And you said, "I would agree."

A I would agree. I've just said people have different makeups. I guess I have another thought that I've added now.

* * *

[92] * * *

Q Okay. Now, after the excess verdict, would it be fair to say, Mr. Stevenson, that the decisions of what was going on in this case were made above you, in the State Farm organization?

A Generally that would be true.

Q That was at the division and home office [93] level, wasn't it?

A No, that's not true.

Q Wasn't Manuel Mendoza involved in the decisions?

A That's true, that's home office level.

Q Manny Mendoza's home office. And Bill Brown was involved, because it involved an amount in excess of $50,000, right?

A I answered the question the way I did because there's a great difference between division, our division, there wasn't great involvement, or involvement in that. Mr. Brown was involved, but he wasn't the division manager.

Q I'd like to know, Mr. Stevenson, did you ever take any action to encourage the management above you to try and post a bond for the full amount?

A My answer to that would be, I didn't have any experience on supersedeas bond, and I was reaching to anybody and everybody that I could get help on the posting of that bond. Our defense attorney, to my superior divisional claims superintendent, Bill Brown, and relying on him, that I have no doubt was communicating with our home office in direction. I was reaching anywhere and everywhere I could to get direction on that.

[94] Q Let me ask the question again and let's see if you can listen carefully and answer it. Did you do anything personally to encourage the claim management above you to try and post a bond for the full amount?

A I don't know that I encouraged anyone to post that for the full amount. There was question in my mind, should we post that for the full amount, if that extended beyond the limits that Mr. and Mrs. Campbell had bought for 25 and $50,000?

Q Now, Mr. Stevenson, do you recall knowing that an excess verdict would be traumatic on the Campbells, do you recall sending any kind of letters or talking with them personally expressing your concern for them?

A Mr. Bennett was handling that matter, which is a normal procedure.

Q Okay, now let's ask the question again and see if you'll answer it. Listen carefully. Did you, Mr. Stevenson, knowing that an excess verdict would be traumatic, as you just said a few minutes ago, did you ever contact the Campbells, or write them any letters expressing your concern for them?

A I didn't know how the Campbells reacted to this, as I previously said. Some people take trauma in a much different way. I didn't send them any letter, [95] which is a normal procedure. I didn't do that.

Q Okay, so you did nothing in that regard.

A Normal procedure, I did not do that.

Q Now, you received copies of letters from Wendell Bennett to the other parties involved where he was encouraging Mr. Campbell to enter into an agreement to protect his personal assets. Do you remember that?

A I remember seeing correspondence on that, yes.

Q And did you ever do anything to call Mr. Bennett and say, "Don't encourage them to enter into such an agreement"?

A I don't -- No, I don't remember any conversation like that.

Q Isn't it true, Mr. Stevenson, that the only reason that the Campbells had to enter into the 1984 agreement was to protect their assets because State Farm wouldn't post a supersedeas bond?

A My answer to that is, we were proceeding exactly as the attorney Mr. Hoggan had put in writing and requested, and also he was making that request because Mr. and Mrs. Campbell had made that request of him in proceeding exactly in the way of a motion for new trial, and if that was denied, to proceed on with an appeal. We were following exactly what Mr. Campbell and [96] his attorney had asked us and told us to do.

Q All right, now let me ask the question again, and listen to my question, please, and try and answer it.

MR. BELNAP: Your Honor, I'm going to object. I think he did answer the question.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) I will ask you again, Mr. Stevenson. Isn't the reason why the Campbell, Mr. Campbell had to enter into the 1984 agreement whereby Slushers, or Mr. Slusher and the Ospitals agreed not to execute on his property in turn for his agreement to bring a bad faith action against State Farm, wasn't the only reason he entered into that was to protect his assets because State Farm would not post a supersedeas bond?

A I can't answer that. I don't know what Mr. Campbell's thinking was. I don't have the benefit of that.

Q Can you think of any other reason why he would enter into an agreement to protect his assets if the bond had been posted?

Let me back up before you answer that. Isn't it true that a supersedeas bond, if posted for the full amount of the judgments, would have fully protected [97] Mr. Campbell and all of his assets?

A I would imagine it would have.

Q All right. And State Farm did not post such a bond, did it?

A Exploring and determining whether that should be posted, as I've said, explored that, but did not post the bond, no.

Q All right. And so Mr. Campbell then sought, with the encouragement of State Farm, to enter into the 1984 agreement to protect his assets. Do you know of any other reason why he did that?

A I don't know Mr. Campbell's thinking. I can't answer that.

Q And if State Farm would have settled before the trial, the Campbells would not have to be here today, would they?

A I look at cases of liability and make decisions, and the jury made a decision on this, which was surprising to me, but I don't know that I can answer that any more than that.

Q If it had settled, if both the Ospital and the Slusher claims were settled before the trial in September of 1983, the Campbells wouldn't be here today, would they?

A If the liability was there and required a [98] settlement, the Campbells wouldn't have been here today.

Q And if State Farm would have posted the supersedeas bond, thereby protecting their assets, the Campbells wouldn't be here today, either, would they?

A That one I just have a hard time, I don't know the answer to that.

* * *

[100] * * *

Q Are you proud of the way that you and State Farm have protected the Campbells in this case?

A I am sorry to any policy holder if there is trauma, or if there's worry or sleepless nights, or concern about a lawsuit or an accident. But I'm proud that we provided for Mr. and Mrs. Campbell, Wendell Bennett, a competent attorney, a good investigation of the accident, listening really closely to a good trooper who had twelve, thirteen years, a fine reconstructionist, I'm proud of those things, yes.

Q And you're proud of the way that you protected the Campbells.

A I'm proud of that.

Q Have you ever seen any, in your career, any claim which has not been paid for full fair value?

A Well, having dealt with many plaintiff attorneys, yourself included, a number of times, Mr. Humpherys, I'd

have to say what some people consider the fair value of a claim may not be the fair value of [101] the claim. But I would say, in my heart, I don't have any problem in saying I've provided payment for fair value of claims to any person who I've dealt with in a claim.

Q And you've never heard of anyone else at State Farm paying less than full fair value, either, have you?

A Anyone who I trained or worked with did not do that. And I don't know that other people in State Farm did that, because State Farm does not train their people other than to be fair and paying the value of a claim.

Q After all that you've read, have you seen anything improper that was done in the Campbell file at any time?

A Well, I guess if you're asking me hindsight, and I look back, I can say yeah, I wish I'd settled it and done that. But I'll strongly say what I said a few minutes ago, in my heart I know that I went through and gave Campbells every bit of chance and help from my years of experience that I'd had in working on claims and lawsuits, and wanted to provide, and gave that to them as best I could.

Q Let me see if I can ask the question again. In review of the file and the other information you [102] reviewed, have you seen anything improper that was done in the Campbell file? And if so, I'd like you to describe it.

A I'd have to say I don't see anything improper.

Q Is there anything that was done in the Campbell file that was inconsistent with State Farm's standard policies and procedures as you understood them?

A Investigation, constant evaluation of information coming in, providing -- There's nothing. We gave them all.

Q And do you feel that you handled the file appropriately, as well?

A That's one of those that's hard to pat yourself on the back, and I'm not doing that, but I'm saying I'm not ashamed

of how I handled the Campbell file. I have no ashamedness of that. Again, I'll say I don't like people to go through sleepless nights and trauma, but I guess that's part of automobile accidents. But I'm proud of what I've done for the Campbells.

Q And as far as you know, Mr. Bennett, his representation of the Campbells and in fulfilling State Farm's responsibilities, everything was proper and consistent with State Farm's policies and procedures, and the position they took in this case, correct?

[103] A I have no problem with Mr. Bennett. And that isn't just a blanket statement. Case by case, he has handled those well, and in this case my view is he handled it well.

Q Do you recall last October giving testimony that you felt that even if there was clear liability, the wrongful death claim of Mr. Ospital, the young boy that was killed, would only have value of between twenty and $25,000?

MR. BELNAP: Your Honor, this is beyond the scope of direct.

MR. HUMPHERYS: This has to do with impeachment of his opinions and his biases.

MR. BELNAP: He's not given any opinions, and that's not a bias-related issue, Your Honor.

MR. HUMPHERYS: It is in light of the way the jury found, both in '83 and last October, and it impeaches his evaluations.

THE COURT: I'll allow it, overruled.

Q (BY MR. HUMPHERYS) Isn't it true last October that you testified to the jury that in your opinion Mr. Ospital's claim for the death of Todd Ospital only had value between twenty and $25,000, assuming clear liability?

A I would have to strike the word "only." I [104] don't know that I said "only." But I do remember saying that my view of that death claim, considering it was back in the 1980s,

and my experience in settling claims with plaintiff attorneys, and seeing what juries were awarding, that I did feel the value was twenty to $25,000.

Q And it's also true that you said that you felt Campbell had absolutely no exposure to an excess verdict. Or any verdict. You said no exposure. Do you remember saying that?

A Again, as you said, "absolutely," and no, I'd have a hard time going back to remember. But I would probably have said I didn't think he had exposure. I don't know about absolutely. I'm not --

Q Did you use the word "any exposure"? "I did not feel that he had any exposure"?

A I very well could have. I would doubt that I said absolutely.

Q Let's just make sure there's no confusion. You're on page 1,526 of the trial transcript of October, you said here on line 17, "I did not feel that he had any exposure."

"Any exposure" to you, doesn't mean that absolute?

A Oh, I see a difference between those. [105] "Absolute's" a very exacting statement. I see some difference in those. But I can see what I said, and I agree with that, and already had before it was up there.

Q Now, I'd like to cover a couple of other points. Do you remember telling me in your deposition about an incident in a case where Ray Summers, you were involved in a file that Ray Summers was involved in, and as you read the file back in the '79, '80 era, you discovered that he had misrepresented to the opposing attorney the policy limits? Do you remember that?

A I remember that, but it's not exactly as you've stated, no.

Q Did he or did he not misrepresent the policy limits?

A He did. But as you've outlined, it was a lawsuit, and I didn't say that. It wasn't a lawsuit.

Q I'm sorry. It was a claim, then; is that right?

A It was an attorney representing some people, and I don't think a lawsuit had been filed. I think it was strictly an attorney representing a person. Mr. Summers was contacting that attorney.

Q But the context was that the attorney was representing these people in a claim, right?

A That's true.

[106] Q And that Mr. Summers had misrepresented the policy limits, meaning he said the policy limits were lower than what they really were, right?

A That's what I saw in the file, yes.

Q And you went in and talked to the attorney, didn't you?

A I was in the attorney's office, and discovered that when I was sitting in the attorney's office, and I did have a short conversation with him.

Q Let's read what you said about that. This is on page 209 of your deposition, starting on line 4.

MR. BELNAP: Your Honor, I'm going to object to the use of this deposition. There's been nothing indicated from the witness that he was inconsistent.

MR. HUMPHERYS: This is a party, and for a party the rules provide you can use it for any purpose.

THE COURT: Overruled.

Q (BY MR. HUMPHERYS) All right, now, starting on line 4, I asked, "Did you disclose the appropriate limit?"

This is after you discovered that Mr. Summers had told a lie, and that it was not what was represented, right? That's the context of this question, right?

A "Did you disclose the limit?" is the [107] question?

Q Right, but before, the page before I was asking you, and you were telling me that as you were going in to see this attorney, up in Logan was it?

A In Logan, yes.

Q That you had discovered Mr. Summers had misrepresented the policy limits, right?

A That's correct.

Q And then I asked, "Did you disclose the appropriate limit?"

And your answer, "Fortunately, we never got to that area of discussion, so I didn't have to. But I was worried that I would have to."

"Are you aware if Mr. Summers made that disclosure?"

"No."

"And you did not?"

"I did not."

Mr. Stevenson, your honesty was addressed by Mr. Belnap, and you made an emotional plea that you always try to be honest as you deal with one another in life. Don't you believe that when you know a dishonest act has been taken place and you were part of it, but being part of the organization, that you, in all honesty, had a duty to disclose that to the other [108] attorney, and you didn't?

A I would have to tell you things that went through my mind and my worry. Number one, Mr. Summers had a year or so more experience than I did. That was fairly early in my career. My worry was, "Am I wrong and he's right? Am I reading this wrong?"

I would tell you this. If I had got to the point in talking to that attorney more than just a casual conversation, I would have pointed that out to him, if he'd got into discussion in that area.

Mr. Summers had a year more experience than I did, and I had a fear that maybe I was reading that wrong, or maybe it had been typed wrong or something that was wrong there. There are many things that went through my head, giving me fear that maybe I wasn't right in what I was seeing, but I thought I was.

Q All right, let's read the page before, then, to see how much question you had. And I was asking you about this, you said, "It was so evident in that file that there had been a disclosure of a policy limit that was not truthful, that I almost stood up out of the attorney's office and fled the office, it scared me so bad."

Now, if it affected you that way -- That was your testimony, wasn't it?

[109] A It was.

Q If it affected you that much, Mr. Stevenson, why, if you are a fully honest person, didn't you go in and tell that attorney what the truth was?

A My only answer would be what I've already said, and that is there are a number of things going through my mind. One of them, worrying if I was wrong, there was somebody who had a year more experience than I did. If it had been my file and I was negotiating, I can assure you that the attorney would have known the limits.

Q That was in '79 or '80; is that right?

A I don't -- I'd have to think really hard to get to that date.

Q He was still, Mr. Summers was still employed, wasn't he?

A He was.

Q And so we know it was before '82. Do you remember telling me it was around that time period?

A I don't remember when I said, but late seventies could very well be the time.

Q Now, you were employed since 1964? That was your testimony?

A Yes, that's correct.

Q So if my math is right, that's about fifteen, [110] sixteen years you had been employed at State Farm, and you thought you had insufficient experience to know when a policy limit has been misrepresented?

A I'm trying to go to dates, and I may be in error in agreeing that this was in '80. I can tell you --

Q No, I said '79 or '80.

A I can tell you Mr. Summers had been injured in a canoeing accident, he was away from work for two or three weeks, and I was up there working some of his files, trying to keep things going. And saying exactly when that was, I'm in error in agreeing that it might have been '79. I'm not sure when that was.

Q All right. Well, in any event, it wasn't in the mid-sixties, was it?

A Could have been.

Q Shall we go back through your testimony again, where your best estimate was around 1980?

A I have to answer that by saying I'm not sure when it was. I'm sorry.

Q I don't think we need to go through it any further.

You were a superintendent at the time, weren't you?

A At that time?

[111] Q Yes.

A No, I was not.

Q Okay, you were not.

A No.

Q Did you report it to management?

A No, I didn't.

Q And you didn't do anything about it?

A No, I didn't.

Q Did you report Mr. Summers to the insurance department for being dishonest?

A No, I didn't.

Q You didn't report it to anybody, even though it shocked you?

A It shocked me, and it gave me some idea that there was something there that probably, and very likely was not correct.

Q Now, just as a final matter, looking at some of your PP&Rs, now, you have seen, have you not, this memorandum which has been made an exhibit in this case, dated September 12, 1994, from Frank Haines, addressing the issue of PP&Rs, and what's appropriate to have in them and not.

I don't want to belabor that, but do you see here, where it talks about pendings, the reduction of claims, indemnity costs, pendings, or expenses as a goal [112] and so forth? Excuse me, yes, as a goal. That refers to claims management. At the time we were looking at your PP&Rs, Mr. Belnap had them on the screen. You were a superintendent, weren't you, for part of that period?

A Some of those PPRs, yes, a couple of them.

Q And you were a claims representative for others, correct?

A That's true.

Q And so this would apply directly to you as a claims representative, or in claims management, right?

A Well, I'm having a hard time. I've never seen that document. It's not familiar, I've never had a copy of that come to me, and so I haven't concentrated trying to read that. So I'm going to have a hard time answering your question. You'd have to ask me a question again, and let me read to try to find the answer.

Q I'm not asking you to comment on the memo. I'm just referring now as a foundation for another question.

A I'm sorry, you've got my attention to try and read that.

MR. BELNAP: Your Honor, in terms of the foundational objection, the memo is dated 1994, and I had up on the board an '81, two, and three PP&R.

[113] MR. HUMPHEP''S: There's no question about that, and I'm going to go into some of those.

MR. BELNAP: Thank you.

Q (BY MR. HUMPHERYS) Now, on Exhibit 138, here, this is the front page of PP&Rs presently. Do you recognize that?

A No, because I haven't had anything to do with front pages of PP&Rs for, since 1988.

Q What happens to the front page when it comes to you? Is that ripped off?

A That may be on there. My concentration is on working with the goals and setting the areas in there.

Q So these directives that are coming that are talking about what shouldn't be in PP&Rs, it never gets down to your level, Mr. Stevenson?

A I'm sure I've read it, but since 1988 I haven't put my concentration to it, so it's not familiar to me.

Q So you haven't read this. Okay. Well, that's fair. You see here where it talks about reduction of pendings and other items is inappropriate goals to have in your PP&Rs?

A Well, where you pointed to, I don't see the inappropriate word, so I'm having a hard time with that.

Q The "should not be included"? Do you see [114] that?

A Fine, I see that, yes.

Q And isn't it true that some of the very goals that Mr. Belnap had you talk about were reduction goals of pendings?

A I had some goals on my PPRs in the eighties of working to reduce pendings.

Q The very thing that the company's indicated is inappropriate?

A I can't answer that.

Q Now, we've heard testimony -- Well, let me back up, and first of all, one of the PP&Rs that Mr. Belnap did not put up was your 1981, and I'd like to put up a portion of it, here.

Do you see here under item number 3, continued, and subpoint number 2, which is Bates stamp 06072, trial page 1,584 of Exhibit 51, volume 3. Let's read that together. "Continuing to settle on a first-call basis X claims that can be settled in that manner, and utilize coverage P in questionable liability cases with pedestrians."

Isn't it true that you had a fair amount of objectives and goals in your PP&Rs that have first contact settlements?

A My memory wants to say two. I don't know [115] about more than that, but I think there are two, as I remember.

Q And then the next one, item number 3, "Maintain current high percentage, 86 percent of control claims so as to eliminate attorney representation and higher cost."

Mr. Stevenson, you're aware, are you not, that if you can keep a claimant from retaining counsel to advise them of their rights, that you can settle claims substantially less? You're aware of that, aren't you?

A I'd disagree. The word "substantial" is not true, and there are many times that I've had people who have been non-represented that I've made offers to who have retained counsel, and I've sat down with counsel and explained to them why I made that offer to their client, and make the very same offer to them.

Q And many times where that hasn't been the case, too, isn't it?

A And generally those cases, I found plaintiff attorney has sent his client out for large and exotic MRIs and so on, and they've been off work a lot longer, and things have just, they're just different than when I'd looked at it originally.

Q You said you only remember those goals on a [116] couple of them. Let's look at your '93 one. Under the heading "Monitor unit cost goals." Do you remember those cost goal summaries, those schedules? The jury's seen them, where it's just a number of columns, and the coverages are listed,

and it has the year before, actual payments of average paid, and each quarter for the current year, and how they're comparing? Do you remember those?

A I'm having a difficulty because you've mentioned this is my '93 PP&R, and I'm having a hard time with that.

Q Do you remember those schedules? That's what I'm asking.

MR. BELNAP: What time?

Q (BY MR. HUMPHERYS) During the early eighties. Any time during the early eighties.

A I can vaguely recall back to those. I haven't worked with them for lots of years.

Q Do you see here where it indicates, "Check with newly-represented claimants to find out why they retained attorney."

Two problems with that that seem to bother me. Isn't it true, Mr. Stevenson, that you're not supposed to contact the claimant once they are represented by counsel?

[117] A No, that's not true.

Q That isn't one of the ethical responsibilities of a claims representative, is to go through their attorney?

A That's not true. I can contact. The American Bar Association board of governors, in June of 1981, approved that I, as a claim representative, could make a contact with a person. That I couldn't deal with them on their claim, but I could make one contact with them.

Q One contact, for what purpose?

A Purpose, to confirm representation, to see how our service was doing.

Q Oh, sure.

A In this instance, the goal on the board was the contact to see how our service was, if we had a problem with our service, one of our claim representatives.

Q I see.

A But that wasn't dealing with them. As the American Bar Association board of governors approved that, we could make that contact, but we couldn't deal with them.

Q This particular item on your PP&R was in numerous of your PP&Rs, weren't they?

[118] A That particular item? No, that appeared only once in a PPR of mine.

Q Well, maybe the wording was a little different. I think this is a 1985. Let's look at this one, then, under the, nearly an identical heading, "Monitor unit cost goal on B. Maintain early contacts with claimants for control and settlement."

Now, do you remember that you were actually complimented and evaluated as having done a good job in controlling claimants and avoiding attorney representation?

A No, I don't remember that. I remember compliments for controlling claims, getting my investigations done, and promptly getting out to see and help people with the problems and questions they had. That's my remembrance.

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EXCERPTS OF TRIAL TESTIMONY OF STEPHANIE STOUT, JULY 16, 1996

[Vol. 24, R. 10279, commencing at p. 155]

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STEPHANIE STOUT called as a witness by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

[156] **DIRECT EXAMINATION BY MR. SCHULTZ:**

Q Would you please state your name.

A Stephanie Stout.

Q Where do you live, Ms. Stout?

A I live at 5056 South Nelson Street in Littleton, Colorado.

Q And what is your age?

A Fifty.

Q What is your educational background, Ms. Stout?

A I have a high school education, and then I have been working since.

Q Are you presently employed by State Farm Mutual Automobile Company?

A Yes, I am.

Q And where do you work?

A I work in the Academy Park office in the Lakewood area, which is a suburb of Denver.

Q And how long have you been employed by State Farm?

A It'll be eighteen years this month.

Q So you began in July of 1978?

A That's correct.

Q And what is your job for State Farm?

[157] A I am an estimator, I inspect damage on automobiles.

Q And after you inspect damage on automobiles as an estimator, then what do you do? Do you prepare estimates, I guess?

A I prepare estimates, yes.

Q Let me just ask you a couple of questions about your work history before you took your position with State Farm. Were you employed before July of 1978?

A Yes. My step-father has an auto body repair business, and I worked in his employ five years prior to coming with State Farm.

Q And what kind of work did you do in the auto body business?

A I was an estimator and office manager for his facility.

Q How did you learn how to be an estimator at the auto body shop?

A We had some older auto body repairmen working there that would come out and go over a car with me when we had a customer there, and he would specifically show me and tell me what he had to do in order to be able to repair that vehicle. And consequently I got a good foundation for knowing what to do as far as repairing a car.

[158] Q And during that time that you worked for five years in the auto body shop, did you learn how to estimate damage to vehicles yourself?

A Yes, I did.

Q And did you reach a point, then, before you went to work for State Farm, where you were able to make repair estimates at the auto body shop on your own, independent of anybody else helping you?

A Yes, I did, and I also attended a course in Blairsville, Pennsylvania that's Vail Technical Institute, that teaches the estimating business for the auto repair business.

Q Now, in your work before you went to State Farm, when you were working at your step-father's auto body shop, did you have occasion to do business with different insurance companies whose insureds you were, whose insureds' cars you were inspecting?

A Yes, many different companies.

Q Did you have occasion to have contact and work with people from State Farm in that job?

A On many occasions.

Q And how would you characterize your dealings with State Farm while you were in the auto body shop business?

A I felt that State Farm was a very fair [159] insurance company in the way they handled their clientele, and seemed to be real fair about their analysis, and were prompt in their inspections and were very professional people.

Q Now, did there come a point in time where you decided to apply for a position with State Farm, then?

A Yes, there came that opportunity.

Q And have you continued since July of 1978 in a position of an estimator for State Farm?

A Yes, I have.

Q And is that because that's a position you want to be in?

A That's the position I enjoy.

Q Can you explain which offices for State Farm you have worked in over in Colorado since you became employed?

A I started and trained two months in the Academy Park office, which is in the foothills, then transferred over to our Denver service center, which is middle of Denver with surrounding areas, then I transferred back to the Academy Park office, and have probably been in that facility for at least fifteen years.

Q Did you have occasion, during part of the time that you've worked for State Farm, to be employed [160] in the same office, at the same time, with a gentleman by the name of Bruce Davis?

A Yes, I did.

Q And was that in the late seventies, early eighties, approximately?

A That was, yes, approximately.

Q And during part of that time frame when Mr. Davis worked in the same office that you did, did both of you work as estimators?

A Yes, we did.

Q And during part of the time that you were both in the same office, did you have a supervisor by the name of Fred Hartwell?

A Yes, we did.

Q Now, Ms. Stout, I want to ask you a couple of questions -- more than a couple, actually -- regarding some information that has been given by Bruce Davis in this courtroom. Okay?

A Okay.

Q First off, I want to ask you if, during the time that Bruce Davis and you worked in the same office, did he ever tell you that he felt that he was doing things in his job that he believed were dishonest or fraudulent with respect to State Farm insureds or claimants?

[161] A No. Not that I'm aware of. I don't recall him ever mentioning anything of that nature.

Q There's been some testimony -- Mr. Davis testified, Ms. Stout, that in your office, when you worked with him in Colorado, that you had a contest amongst the appraisers, excuse me, the estimators, to see who could save the most money by using equivalent parts, appearance allowances, depreciation, and plastic. And I've just put up here, for purposes of my questions, one of these documents that's called a cost savings report, dated February 1, 1982. Can you see that from where you're sitting?

A Yes.

Q Now, do you notice that your name is on this report, here?

A I see that.

Q Now, can you explain to the jury whether or not this report evidences the fact that the four of you estimators were having a contest amongst yourselves?

A We didn't have contests.

Q What was the purpose of this report as you understood it, Ms. Stout?

A The purpose of that report would be to show dollar savings compared against original manufacturer equipment, those are options that would be available to [162] me as an estimator, to use another source other than original manufacture parts in order to repair or restore that vehicle back to its proper condition.

Q Now, when a vehicle is damaged and a State Farm insured brings that vehicle into the State Farm claims service center, what do you, as an estimator, actually do?

A I'm given that report, and I actually will call that individual's name and that person will accompany me to their vehicle, and we go over that vehicle item by item. I tell them what I plan to do in order to correct and repair that vehicle, and what part source that I would use, or if I feel that the given area would require repair rather than replacement of a part, and I make them aware of what's going to be done to that automobile in the repair process.

Q Do you write out an estimate for them?

A Yes, I do.

Q Now, what does the insurance policy require the company to do insofar as repair or replacement of a damaged automobile is concerned, Ms. Stout?

A We owe that individual to restore their vehicle back to the condition that it was in prior to that accident. We can use other options in order to be able to do that. I'm not sure what else I would want to [163] say about that.

Q Okay. So basically your obligation is to put the car back in the condition that it was in immediately before the accident that caused the damage that you are estimating.

A That's correct.

Q Now, let me just refer to this for a moment. Can you see this column, here, "equivalent parts"?

A Yes.

Q What are equivalent parts? Or what is meant by equivalent parts in that column?

A Well, equivalent parts are new parts -- Well, there are a couple of things that fall into that category. New parts that are manufactured by other distributors, other than the original manufacturer, they are new parts, they meet crash tests and corrosion tests, that they are of equivalent condition to what the original manufacturer would be providing for that vehicle.

Or we have a source from other areas, recycled facilities that have parts that would come off of the same vintage vehicle that could replace the damaged part that we would be looking at.

Q Now, if -- You've already told us what the policy of insurance requires as far as putting the [164] vehicle back in the condition it was in before the accident.

If you are able to find a recycled part, say, for example, from a vendor who handles that kind of parts, what are you looking for, as far as the condition of that part before you will use it on a vehicle for repair purposes, or replacement? Excuse me.

A I would first ask about the condition of that recycled part from that distributor, and if there would be something that would need to be done to that part, for instance, if I were purchasing a door and I asked that supplier, "What kind of condition is that door in?"

He would tell me if it was perfect, or if it had some flaw. And if it had a flaw, I would ask what it would take in order to restore that door to perfect condition in order to be able to install it on that vehicle. And I would provide, accordingly, in my estimate, an order to clean that part up to make it to where it is a good part for that repair.

Q Does State Farm -- Sometimes those parts are called salvage parts.

A True.

Q Does State Farm, is a warranty or a guarantee on those salvage parts, or recycled parts if they're used in the repair?

[165] A I believe it's at least a year, although I've seen times when individuals have returned after that time period, and we've always made good on those parts for those individuals.

Q Okay. Now, I want to ask just one or two other things about this. Do you see where it says equivalent parts, and appearance allowances, and then there are some numbers, here?

A Yes.

Q That are represented to be savings? Can you explain to the jury how this number, for example, with respect to equivalent parts, how those amounts are calculated? What is being compared, in other words?

A That would be, they're comparing the cost of another source part to original manufacturer prices.

Q So in other words, this equivalent part is being, the cost of that is being compared to what?

A The original manufacturer's part price.

Q A brand new part?

A A brand new part.

Q Okay. And what -- And we'll talk about appearance allowances a little more. But what is being compared in the column entitled "appearance allowances," when we speak of savings?

A There, again, that's a dollar amount that [166] would be compared to a new parts price provided by the manufacturer.

Q Now, is there an obligation, is there an obligation on the part of State Farm to put a brand new, original manufacturer

part on, say, for example, a five-year-old vehicle, if it comes in with some damage?

A No, State Farm will provide a like kind and quality part to restore that vehicle.

Q Does it take some effort, as an estimator, to find parts of like kind and quality?

A Yes, it does. It takes extra time. You have to phone call your sources, and find out availability, and condition, and cost factor. It takes extra time in order to be able to pick up that telephone and call those sources.

Q And if you don't want to put the time in, or make the effort to do that, what would be the easy, kind of the lazy way to handle it?

A To purchase a brand, spanking new part from the original manufacturer.

Q With respect to, in this case there have been some discussions about what are called after-market parts. Do you know what I'm talking about there?

A Yes.

Q Did you use after-market parts as one of the [167] ways of repairing vehicles?

A Yes.

Q And do you still use that?

A Yes.

Q Do you use it to try and cheat people out of what they're entitled to?

A I don't cheat people.

Q Is it an appropriate method of repairing a vehicle?

A Yes, it is an appropriate method.

Q Now, do you know whether State Farm gives a warranty on after-market parts?

A Yes, they do.

Q And what is that?

A Lifetime of ownership of that vehicle.

Q Let me ask you, now, you've already told us that your job is to estimate, take the customer around the car and explain to them what you're going to be doing as far as repair. Now, is that the way you were trained by State Farm to do this?

A That's the way I was trained.

Q Is that the way you've handled it during your eighteen years?

A Yes, I have.

Q After you complete your meeting with the [168] customer, and you have your repair estimate prepared, who do you, or what's the next step in the process? Who do you take that customer and that estimate to?

A I would take that individual in to our duty desk, which would be a claim representative that would finalize the paper work, and once again explain to that individual, and they would go over that estimate in detail again with that individual. It's spelled out very clearly, what it is that we're going to do to the vehicle, and what part sources will be used in order to repair that vehicle.

Q Did you explain, or is it your practice to explain to the policy holder if you're going to use an equivalent part?

A Yes, I do explain that I would be using an equivalent part.

Q Tell the jury what an -- We've had a lot of testimony on this, so I think you can be brief, but would you just tell how you used appearance allowances, or how you use them in your estimating work?

A Well, an appearance allowance is not used on a frequent basis. There are some scenarios where you may have a blemish, or the repair may be of minor damage that you can offer a dollar award to that individual for living with the appearance of that blemish on that [169] vehicle.

Q Now, are there different options, as far as appearance allowances? Are there options other than an appearance allowance?

A Well, the owner has -- Yes, the owner has options. The owner has the option of deciding whether an appearance allowance would be an area that he would be interested in, he or she, or they have the option of having me write a complete estimate to repair that vehicle. If I go through that procedure they have, then, the option of either continuing with the repair process, or they can ask for the dollar amount of that estimate and making it known that they do not plan to repair that vehicle.

Q So there is the option of repair, correct?

A Right.

Q That's one option. And for purposes of my example, let's just say the repair we're talking about costs $500.

A Okay.

Q Is that an option that you would explain to the policy holder?

A Yes.

Q There's the option of the appearance allowance, and for purposes of this I'm just going to [170] suggest that the appearance allowance is $250.

A All right.

Q Now, and the third option you said was a cash payment of the entire repair cost?

A Yes.

Q And that would mean that the policy holder would get a $500 payment?

A Correct.

Q Now, when you talk with a person about an appearance allowance, do you explain all three of these options to them?

A Yes.

Q Now, is there any benefit to taking an appearance allowance, which would only be $250, as opposed to taking this cash payment of $500 and not getting the vehicle repaired?

A Well, yes, there is. If that individual chooses that appearance allowance, they're willing to live with the appearance of the blemish on the car. If they choose the cash payment, there would be no lien holder included on the payment. And as far as that cash payment, it would be shown as a pre-existing damage on that vehicle. It would be made a matter of the policy information, that if that individual had another accident in the future and it would involve that same [171] part that we had given an appearance allowance on, we would buy that part for that individual again. However, if he cash settled on it, it would have to be taken into consideration, and we wouldn't buy that part for that individual a second time.

Q Okay. Let me use, let's use a specific example so I make sure we understand this.

Let's say you do the actual repair, it costs $500. The policy holder drives out of the parking lot, and on the way home that same part gets damaged again. If the policy holder comes back in to your claim service center, will that part be repaired again?

A Not if he's received the full payment for that part at that given time.

Q No, I mean it's been repaired already.

A It's already been repaired?

Q Yes.

A Yes, he would receive that part again.

Q If the policy holder took an appearance allowance of $250, went to drive home, got in an accident to the same area of the car again, and they came back in to you again, would this appearance allowance be held against them if they decided they wanted that part to be repaired this time?

A No, it wouldn't.

[172] Q If they took a cash payment of $500 and did not get the part repaired, left the office, went to drive home, got in an accident to that same part, would they be able to come back in again and get a full repair job done on that part?

A No, that would be taken into consideration if it was the same given area.

Q And is that because it would be prior damage?

A That's correct.

Q Okay. Are you familiar with a terminology, CAPA? CAPA?

A Yes.

Q What does that stand for? Or do you know? What is it, let me ask you that?

A It's a compilation of people in the industry, the insurance industry and the repair industry, it's an association that has come together to recognize another part source that they have also required crash tests and corrosion protection tests that meet the same criteria that original manufacturer would have with their own vehicle parts.

Q Does CAPA certify the after-market parts?

A Yes.

Q And does State Farm require that CAPA-certified parts, after-market parts be used?

[173] A Yes.

Q Ms. Stout, Mr. Davis has testified here in court that he was taught, and that he did target certain groups of people when they came in for repairs or replacement, or things like that. And he has indicated, for example, that people who had gray hair, or no hair were targeted aggressively to try and pay them less than what they were due. People who might be on a fixed income status were targeted to treat them less than fairly, and that they were targeted to be low balled, in his words.

He has also talked about other people who had financially tight situations, such as young couples, recently married, single mothers, people who have first mortgages. Now, have you been taught to target those kind of people and to treat them, or pay them less than what they were due, Ms. Stout?

A Absolutely not.

Q Does that sound like the company that you work for?

A That is not the company I work for.

Q Did you have occasion to give some training to Mr. Davis when he first came to State Farm?

A Yes, I did.

Q Did you ever teach him to do those things?

[174] A No, I did not.

Q Have you been taught to treat women differently in their claims than how you treat men?

A No. Absolutely not.

Q Mr. Davis said that if somebody drove in with a very expensive car and an expensive-looking set of clothes on, that he would treat that person better and pay them fair, whereas somebody who came in with an old car, and maybe old clothes, would get treated unfairly. Is that the way you've been taught to handle claims?

A That is not the way I've been taught.

Q Is that the way you've actually handled claims?

A No, I do not handle claims that way.

Q Mr. Davis also talked about the fact that if a retired couple drove up in a motor home and had, say, a decal of a fish or a deer on the side, that that would sort of be a tipoff to him that that's somebody he could take advantage of, and force them to take less than fair value. Have you received that kind of training in your eighteen years?

A I have not received that kind of training. If that individual came in with that type of a unit, and had damage on it, and I

needed to replace that decal, I'd also replace that decal in that repair process. [175] That means nothing, as far as status.

Q Are you surprised to hear that Mr. Davis is claiming that State Farm taught him and others on a regular basis to cheat and to defraud customers?

A No, we are not taught to cheat and defraud customers.

Q Are you surprised to hear that he's saying that?

A I'm very surprised to hear him say that.

Q Are you familiar with a computerized system of estimating claims called Audatex?

A Yes, I am.

Q Have you been trained in the use of that?

A Yes, I have.

Q Can you explain what that is, briefly?

A That's a computer system that has used, I believe, Mitchell-matics as their base product. Mitchell is a universally-recognized source for parts prices and labor times. They've done intensive time studies in order to put a compilation of times in a manual for replacement parts, and that's what Audatex has really based their information on, is what Mitchell has provided to the industry.

Q Now, Mr. Davis has testified that after training was given, I guess at the Audatex headquarters [176] on how to use this computer system, that there was a somewhat secret, closed-door meeting held back at your office, where it was explained to you that State Farm had obtained the secret override codes, and that the only reason you bought this computer system was with that guarantee, that it could be overridden. Do you recall that there was a secret meeting where this was talked about?

A ADP, who provides the Audatex system, taught us how to override the system, because you have some extenuating circumstances to where you would want to override that system. For instance, if you're purchasing a

recycled part that would need a markup put on it, you would want to override the system to allow for that markup.

Or if you had a given area, say, paint, where -- The system is kind of a system for just a blanket situation where, say, in painting instances, the system allows for a full panel. In some cases you would have some minor damage to an edge, a leading edge of a panel, to where you don't need to paint that entire panel, and you would need to override that system in order to allow for just a smaller portion of that paint to be done on that vehicle.

Q Now, did you override the Audatex computer [177] system for the purpose of cheating people out of what they were entitled to?

A No.

Q And you said ADP taught you how to override this? What is ADP?

A Well, I don't know what, exactly what ADP stands for. It's a large computer organization that's providing equipment to the marketplace. Many of the body shops are using ADP systems these days. It's the same program that we're using. Other services have come into the marketplace also. Mitchell also has a system. It's just a source for parts prices and labor times.

Q Has your continued employment with State Farm, Ms. Stout, been dependent upon you paying less than what was owed on claims?

A No, my employment has not depended upon that. My employment has been that I can do the best job I possibly can for the customer, and for the insurance company, to restore that vehicle, and use all the knowledge that I possibly have available to me in order to be able to do that.

Q Have your raises been dependent upon paying less than what was owed?

A No.

Q What have you tried to do, as an estimator, [178] insofar as treating customers, policy holders, claimants, fairly? What have you tried to do in that regard?

A I have tried to be fair with those individuals, and I have tried to treat everyone the same. When I'm looking at a vehicle, I'm looking at a vehicle that is wrecked. I need to restore that vehicle again for that individual, and I need to use the information and knowledge that I have in order to be able to do that, and do it for as fair a price as I possibly can.

Q Do you think you've never made a mistake in eighteen years?

A No, I'm sure I've made mistakes.

Q Have you tried to be honest and treat people fairly, though?

A I have tried to be fair and reputable in the way I handle myself on my job, yes.

Q Have you ever intentionally tried to take advantage of somebody and cheat them and pay them less than what you thought was fairly owed?

A I would not knowingly do that.

Q Did you ever, or do you ever take an appearance allowance settlement without explaining these options, and without getting an agreement?

[179] A No, I have to make that individual aware of what his options are.

Q Is depreciation a method of repair that is appropriate in certain circumstances when repairing a vehicle?

A We do take depreciation in some circumstances.

Q Is there any -- You've testified that you go through the repair estimate with the person, you then take the person to the claim representative, who goes through it. Now, is there any other kind of a check to make sure that what you're estimating is fair?

A There certainly is, and you'll hear from them right away, and it's the repair facility. If you make a mistake, or they don't

agree with your analogy, [sic] they will call and let you know right away. And if you need to make a correction, you certainly would do that.

Q Have you ever been ordered, in your eighteen years with State Farm, have you ever been ordered to take documents out of a file, or change documents if they had something that might be construed as negative towards State Farm?

A No, I haven't.

Q Have you ever been told to change documents, or rewrite documents so that they couldn't be, or so [180] that what was in there couldn't be produced in a lawsuit?

A No, I have not.

Q Have you ever done anything like that?

A No, I haven't.

Q Have you ever been on catastrophe, or storm duties?

A Yes, I have.

Q Okay. Do you have any recollection of Mr. Davis ever telling you that he refused to go on any catastrophe duties because he felt that the one he went on had compromised his integrity?

A I have no recollection of that.

Q Do you think if Mr. Davis had come and told you that he'd been required to cheat and defraud and gouge people on storm duty, that's something you would remember?

A I'm sure I would remember that.

Q If you -- Let me go back to Audatex just for a moment. If you do override the Audatex computerized system, is there something shown to indicate that on the repair estimate?

A There would be an asterisk that would show up on that line area that had been changed.

Q Okay.

[181] MR. SCHULTZ: Can I just have a moment, Your Honor?

THE COURT: You may.

Q (BY MR. SCHULTZ) In your experience on storm duty, Ms. Stout, can you tell this jury whether you attempted to handle those claims quickly and fairly?

A We do handle those claims quickly and fairly. We're dealing with a tremendous amount of volume under those circumstances, and one thing that we do take pride in is servicing our customers. We want to try to get those situations handled to where those people can continue with their repair process and get their cars back on the road.

Q Now, Mr. Davis has indicated one of the reasons State Farm wanted to get to a storm quickly was so they could be there before any other insurance company got there, and essentially control that market as far as what would be paid; is that -- Was that what they told you the reason was for getting to storm duty quickly?

A Well, we don't control the marketplace. We are there, and we get there in a hurry in order to be available for our policy holders. We want to give them the best possible service we possibly can.

Q What could happen if you started cheating and [182] underpaying and treating policy holders unfairly out on storm duty with respect to the agents, the State Farm agents?

A Well, the agents would be outraged. The agents would be very upset. Our policy holders are what keeps this company alive. We can't destroy our business by cheating people.

Q How about body shops? How might they react on a storm duty situation if they thought State Farm was low balling or cheating these people, these customers?

A Well, I'm sure that they would inform the public, and they would also be upset with State Farm. We would certainly hear from those individuals.

Q With respect to any of these things you've talked about, appearance allowances, use of after-market parts, or

recycled parts, or application of depreciation, did you explain those things to the policy holders, and what you were doing?

A Yes.

Q Did you try to hide any of that from the policy holders?

A It's not hidden from that policy holder.

Q Why did you decide to go to work for State Farm instead of some other insurance company when you left the body shop business?

[183] A Well, I got an overview of insurance companies, working in the facility that I was working in, and State Farm always struck me to be a very professional, well-informed, conscientious number of people that would come into our facility. They always handled their clientele very well, and I felt lucky to be part of that organization as far as them hiring me. I was impressed with the way they did business.

MR. SCHULTZ: That's all. Thank you.

CROSS EXAMINATION BY MR. CHRISTENSEN:

Q Ms. Stout, you've testified that you worked in the Academy Park claims office in Colorado?

A Yes, sir.

Q Were you in that office in 1981?

A Probably by then.

Q I want to show you a document that was part of the Bruce Davis documents that I've been waiting to ask somebody about.

A Okay.

Q I think this may be one of the key documents of this case. Remember this memo on birthday celebrations? This is a joke, by the way. A vote was taken whether to discontinue baking birthday cakes? Anyway --

[184] MR. BELNAP: I don't see anybody laughing.

MR. CHRISTENSEN: You're right, I'll get it off of there. You don't remember how you voted on that?

THE WITNESS: No, I don't recall that. I shouldn't be eating cake.

Q (BY MR. CHRISTENSEN) All right, I won't try any more humor. Now, you've been with State Farm for eighteen years?

A Yes, sir.

Q And by the way, I had the pleasure, and you had the pleasure, I'm sure, of a deposition this Sunday, about two days ago.

A That's correct.

Q You and three other witnesses' depositions were taken Sunday?

A Yes, sir.

Q So your deposition was just two days ago?

A That's -- I forget what day it is.

Q Today's Tuesday.

A Okay.

Q It was your sworn testimony two days ago that you've never, in eighteen years, treated anybody unfairly at State Farm; isn't that true?

A I may have been more blunt in my deposition, but I have to admit that I may have made a mistake along [185] the way unintentionally.

Q So are you changing your testimony, you now admit you have treated people unfairly?

A No, I'm not telling you I've treated people unfairly. I'm telling you that I may have made a mistake unknowingly through the years, possibly.

Q You've never tried to take advantage of anyone to pay less than full fair value?

A No, I don't believe that I have.

Q You've never seen anyone do it, or even heard of it at State Farm?

A I don't believe that I have.

Q You've never actually paid less than full fair value to any claimant.

A I don't believe that I have.

Q And you're not aware of anyone at State Farm ever doing that.

A I'm not aware of that.

Q And you're not aware of State Farm doing anything unfair to anyone in the whole eighteen years you've been there.

A I can't think of an incidence that I could say that I know. I'm not aware of that.

Q You understand that State Farm requires a very high degree of loyalty from their employees, don't [186] you?

A I think it's a voluntary thing. I think we're proud of our company.

Q State Farm requires a very high degree of loyalty from its employees, doesn't it?

A I think any company would want loyalty from their employees.

Q So your answer is yes?

A I would say I feel a very high loyalty to my company.

Q You understand that State Farm is very serious about having company employees that testify in bad faith cases say things that support the company, don't you?

A I'm not aware of bad faith cases. I'm not aware of that.

Q You know that it would have some very bad implications for your career if you were to say anything here today that was negative about State Farm, don't you?

A I would have to come into this courtroom and tell this court the truth, regardless of the implications.

Q Do you understand that there would be some very serious implications if you came in here and [187] confirmed that what Bruce Davis said was true, don't you?

A I feel in my heart that I would always have a job with my company, regardless of what I said in this courtroom.

Q Now, as a negotiator, or excuse me, as an estimator, you don't get involved with negotiations with people, right?

A No, I don't get involved in negotiations.

Q You don't settle claims?

A No, I don't.

Q Now, in your deposition you indicated that you had very little to do with rental benefits; isn't that true?

A That's true.

Q Isn't it true that in many instances, once you get through doing an estimate on a car, that it's your job to walk somebody down to someone else to get them lined up for rental benefits?

A When I'm through writing an estimate I take that individual to a person who will explain the estimate again to that individual, and make sure that there wouldn't be any question in that individual's mind as to what to expect as far as the claim process.

Q But you have to take that walk with that [188] person down to somebody else to line them up to get their rental benefits, don't you?

A I have to take that person to show them where to go.

Q And there have been many instances where you haven't made that walk for rental benefits, haven't there?

A I accompany that person to where they need to go. They need to be shown where to go.

Q And there have been many instances where you've just forgotten to take them down to get their rental benefits, haven't there?

A I don't know what you're getting at.

Q Now, in your deposition you admitted that you'd been trained to do manual overrides of the Audatex system?

A Audatex showed us a way to override the system, in order to make some kind of change, if need be, in the appropriate situation.

Q So if someone wanted, at State Farm, to do that, to reduce a repair estimate, they could do it.

A Well, maybe an unsavory individual might do that.

Q Of course, someone wanting to reduce average pay per claim could do it?

[189] A I don't believe that that -- I have no idea why they would have that motivation.

Q Average pay per claim is never stressed at State Farm, is it?

A State Farm makes their employees aware that there are avenues available for repair, to repair a vehicle as reasonably and fairly as possible.

Q And if you were writing a repair estimate with Audatex for someone that you knew wasn't going to repair their car, it would be a fairly slick way to reduce that claim, and nobody would be the wiser; isn't that true?

A I have just gone over that vehicle with that individual in detail as to what needs to be done to that car.

Q And you know what you're doing, and they don't understand the technicalities, do they?

A Well, I think the consumer public is smarter than that.

Q They know all those little parts that go into repairing a car, which ones are needed and which ones aren't?

A Well, they may not know the intricacies of that, but in our explanation I think we're pretty thorough with that.

[190] Q Now, your deposition testimony was that State Farm doesn't emphasize average pay per claim; isn't that true?

A I don't believe that they do emphasize that. I think that we are made aware that we can write estimates as reasonably as possible.

Q Fred Hartwell was your boss?

A Yes, sir.

Q I have his PP&R from December of '90, so this would be a PP&R, presumably for the year '91. See the underlined portion I'm referring to right here? Can you read that from where you are? "Strive to reduce average costs for unit 160 to maintain claim section B goals of --" And you were in claim section B?

A Yes.

Q "-- of coverage B." What's coverage B?

A Coverage B is a third-party claim.

Q But it's collision?

A It's collision.

Q It's property damage where you're paying for a car that one of State Farm's insureds has damaged.

A True.

Q And coverage G, is that collision coverage on a State Farm policy holder's car?

A Yes, it is.

[191] Q Do you see your boss having some specific goals on average pay per claim?

A I see that.

Q Does that shock you?

A No, that doesn't shock me.

Q This is the first time you've ever seen something like this?

A That's the first time I've seen my supervisor's progress report, there.

Q The only way he can meet those goals is if the people that work for him do it, right?

A I don't know if he can meet those goals. You can't control how much damage is out there on a daily basis.

Q Well, let's see how he did. See where it says, "Achieved units current through," and I think that's 9-91,

I believe we established in his depo Sunday. No, it's '91, see the date on the document? Average paid costs. Coverage B was $1,154, so he has reduced average pay per claim for coverage B, hasn't he?

A Well, I think he got lucky enough to do that, maybe.

Q And he's done it by your help. And coverage G, he's reduced average pay per claim, hasn't he?

A It looks like he managed to do that.

[192] Q He never mentioned it to you?

A No. That's personal.

Q Well, he's not out estimating cars himself, is he?

A No, he isn't, but he's had the background to where he has in the past.

Q But my point is, he can only achieve those goals if the estimators, like you, go along, right?

A He can achieve those goals if we use good repair practice in order to be able to repair a vehicle.

Q Are you familiar with a William T. Beenck?

A Yes, sir.

Q Is he the divisional claim superintendent?

A He was. He's retired.

Q He was not only your boss, but he was Mr. Hartwell's boss?

A Yes, he was.

Q Here's his PP&R, it looks like for the year '91. Do you see some average pay per claim goals there for property damage settlements?

A Yes.

Q And it says they're going to be achieved with strong negotiations. That's another way for saying pay less, isn't it?

A No, that is not a way to say pay less.

[193] Q This is another one of Mr. Beenck's PP&Rs. This looks like for the year 1990. Do you see some average pay

per claim goals, there?

A Yes, sir.

Q Your testimony is you have no idea this was going on?

A I'm not involved in management.

Q These are the areas that you settle in, coverage G, for example? That's your area?

A I would handle a collision loss for an insured, yes.

Q I think this is the back side of this sheet we just saw, so I think it's dated 1990. I'm glad I got the birthday cake memo out. Do you see some more average pay per claim goals there?

A Yes.

Q It's also your testimony that the use of appearance allowance was not emphasized, in fact its use was fairly rare. Didn't you say that Sunday?

A It's not emphasized, and it is not used very often.

Q In fact, you testified just two days ago under oath that you did not, you were not even aware of a document called a cost savings report, didn't you?

A I believe I probably said that, yes.

[194] Q We just have on the screen. So just two days ago you said you'd never heard of this document, didn't you?

A Well, now I know what it's called.

Q Since your deposition, were you shown this, and shown that your name was on it?

A No, I was not.

Q And it's your sworn testimony that appearance allowance was not emphasized.

A No, it's not emphasized. It's just an option that's available when it makes sense.

Q Wasn't the whole purpose of these -- And you know, we've got a number of these. This isn't the only one --

A Okay.

Q -- Mr. Davis gave us. Wasn't the purpose of these to emphasize these items?

A No, that is not my understanding of what that's for. That's just to make us aware that we have those areas available to us to use, and use wisely and accordingly.

Q Is Mr. Davis being congratulated for simply being aware?

A Apparently they think he was doing a good job at that point.

[195] Q Now, Mr. Davis and you were in the same unit, obviously.

A Yes.

Q We don't have your PP&Rs for this time frame, do we?

A I don't know. I guess not.

Q Well, we haven't seen them. If you have them, we'd like to see them.

A I do not have them.

Q We only have your PP&Rs from the nineties.

A Okay.

Q And you don't have any documents from State Farm from the years Bruce Davis worked there, do you?

A Absolutely not.

Q This is a valid document, isn't it?

A It appears to be.

Q If we had your PP&Rs from that time frame, they ought to look a whole lot like Bruce Davis', hadn't they?

A They may look similar. I hope they say nicer things about me.

Q Here's Bruce Davis' PP&R for the year 1982. Do you see where he's got appearance allowance goals?

MR. SCHULTZ: I don't think that's his PP&R.

THE WITNESS: I don't recognize that memo.

[196] Q (BY MR. CHRISTENSEN) It's his performance

planning and review, six month review. Isn't that part of the PP&R process?

A Not as I remember it at this point.

Q Isn't that where you sit down with your boss, six months into the year, and see how you're doing?

A We may have a review during the interim from year to year.

Q Doesn't that look to you like that's what this is?

A Without reading the whole thing, yes, that appears to be some kind of a review.

Q And this talks about his goal of $100 a month in appearance allowance. See that?

A Okay.

Q Does that refresh your memory that you had appearance allowance goals, too?

A That may have been State Farm's style at that time.

Q And it also talks about a goal for equivalent parts of $2,000 a month. In your deposition you denied there were such goals, didn't you?

A I don't really remember that form of performance review. It's been so far back. I don't believe that that's an arbitrary amount. It's just an [197] awareness that we could do as much as we possibly could to keep our costs down as much as possible.

Q You did deny the use of salvage parts was emphasized at State Farm in your depo, didn't you?

A I don't like the word "emphasized." I don't believe it's appropriate.

Q Appearance allowance is still being emphasized, isn't it?

A No, it's not being emphasized. We get a reminder that we can use it when appropriate.

Q We do have your recent PP&Rs, I'm going to show you one, a page from one dated June 12th, '92. Do you recognize your name on that document?

A Yes.

Q And by the way, this is simply a tab so I can keep track of all these. It's not covering up anything, there. See the part I've underlined, "I will comply with company policy regarding the use of quality replacement parts and like kind and quality parts. I will use all available cost-savings techniques." The cost savings techniques include appearance allowance, don't they?

A That's part of it.

Q In fact, a standard question on the PP&R -- and we're looking at yours from '94 -- is for your superior to [198] rate how you're doing on appearance allowance. Isn't that true?

A It looks like it's a category.

Q But it's not emphasized.

A No, it's not emphasized. It's just to make me aware that it's available, and to use it when it's appropriate.

Q You know, Ms. Stout, in your deposition you denied that buck slips were used in your office, didn't you?

A I'm not aware of buck slips.

Q Are you aware that Mr. Hartwell and Mr. Norman Sunday said they were used?

A I have never made a practice of using buck slips. I don't know what that is supposed to mean.

Q You've never seen anybody do it in your office in all those years?

A I'm not aware of that.

Q When asked if you knew if files were altered, you said that wasn't your area.

A That isn't my area.

Q You did testify, from what you observed, Bruce Davis did a good job at State Farm.

A I thought he did.

Q And you didn't know him to be dishonest?

[199] A Not that I was aware of.

Q It's your testimony that you're not involved in total loss settlements. If a car's totalled, that goes to somebody else?

A That does not fall within the realm of my job description.

Q And it's your testimony that the use of salvage parts was not emphasized at State Farm?

A No, sir, they're not emphasized.

Q Now, you claim that State Farm's always guaranteed those parts since you've been there for eighteen years. That's not true, is it?

A They've always guaranteed those parts.

Q Didn't that come into play after lawsuits against State Farm and changes in the law that forced it on State Farm?

A I'm not aware of that. I believe they've always guaranteed the use of that kind of part.

Q In your deposition you claimed that it was State Farm's intent to repair, in repairing cars, to use the best products available.

A Yes, sir.

Q Regardless of cost.

A Regardless of cost.

Q Isn't it true that it's State Farm's intent [200] to use the cheapest parts available, regardless of quality?

A No, sir, that is not true.

Q Let me show you a page from Mr. Hartwell's PP&R. Again, he was your supervisor. This is from 1994. He says, "We will use accepted cost savings techniques to minimize repair costs." Isn't that the philosophy at State Farm, is to minimize repair costs?

A No, sir, that is not our philosophy. We restore that vehicle back to its pre-existing condition using the most reputable and cost-savings areas that we possibly can.

Q Now, Miss Stout, you testified that even though your name appears on those cost savings reports with your statistics compared to everybody else's, that there were never any contests at State Farm. Right?

A I have not been involved in any contests. I don't know what you're talking about when you say contests.

Q And you're not aware of anybody at State Farm ever having contests around things like appearance allowance.

A No, sir, I'm not aware of that.

Q You admit it would be wrong to do that, don't you?

[201] A I think that would be wrong.

Q And it would provide an incentive to pay less on claims, or to do things that may be inappropriate.

A I do believe that would be wrong.

Q Now, the Utah office, or functions at State Farm, as long as you've been there, have always been under the same management as Colorado, haven't they? Same region?

A I believe so.

Q I'm going to show you a document that we got from Samantha Bird dated September 19th, '86. This is the time frame Bruce Davis was working at State Farm in Colorado.

A Okay.

Q Or at least close to it.

MR. SCHULTZ: I think it's two years after he worked there, counsel.

Q (BY MR. CHRISTENSEN) This talks about pride month in Utah. Did you have pride months in Colorado?

A I've heard that terminology.

Q It says, "October pride month we will have the following categories of competition." Does that surprise you?

A Not aware of it.

Q "Sandy and Murray will compete against each [202] other and Ogden and Orem will compete against each other." And there are a number of areas of competition. D is estimatics. That's your area, isn't it?

A Yes, sir.

Q "One winner will be selected from the Sandy/Murray competition, and one winner from the Ogden/Orem competition. Competition will be relating to cost savings in the following three categories. Appearance allowance, after market parts, and salvage parts."

Bruce Davis was telling the truth about competitions around these issues, wasn't he?

A No, sir.

Q This happened in Utah, but it never happened in Colorado.

A Never happened in Colorado.

Q Now, you testified that if State Farm didn't do everything just right on repair estimates, the body shops would take care of it.

A Yes, sir, they would let us know if we had made a mistake of some kind.

Q Isn't it true State Farm has the leverage to intimidate body shops?

A There are 300 body shops in the Denver area.

Q And some of those State Farm has a great deal [203] of control over; isn't that true?

A State Farm does not control body shops.

Q I'm going to show you a part of Mr. Hartwell's PP&R from 1993. The part I've underlined, "On goal. Co-pay drafts have been prepared more than 50 percent of the time in every month except March and April." That's considered a good thing at State Farm, to do co-pay drafts, isn't it?

A You're getting into an area I'm not involved in.

Q I think you are. State Farm -- A co-pay draft is where you put the name of the insured and the name of a specific body shop on the check, isn't it?

A That would be my understanding.

Q And State Farm does that so they can write the name of a body shop that they have some control over; isn't that true?

A No, sir. That's usually in situations where that individual has already chosen what repair facility they're going into, and the car is in that facility, and that's a means of payment.

Q Why would this be a goal?

A I don't know why that's a goal.

Q For Mr. Hartwell, if all it is, is putting the name of the insured's chosen body shop on the check? [204] That goal is so that State Farm can choose the body shop, isn't it?

A No, State Farm does not choose body shops for people.

Q Now, you indicated -- By the way, you were not on storm duty with Bruce Davis, were you?

A No, I wasn't.

Q Finally, on this body shop subject, you said if State Farm didn't do things right, the body shops would get upset.

A I believe that's true.

Q The truth is, the whole body shop industry has been extremely upset with State Farm, isn't it?

A I don't believe that's true. I come from a body shop situation.

Q You don't know that the body shop organization has opposed State Farm on the use of like kind and quality parts in the different discussions that have taken place around the country on that?

A I don't know that.

Q You've never heard that?

A I have not heard that.

Q Now, you said State Farm has never been unfair or discriminated on the basis of sex or anything else.

[205] A I don't believe so.

Q You've been the victim of some discrimination in that area yourself, haven't you?

A I have not been a victim of that.

Q You have never been promoted in eighteen years.

A If I wanted to be promoted, I could initiate that. State Farm gave me the opportunity as a woman to come into their company and work for their fine company.

Q You've trained a lot of men who have been promoted while you've stayed behind; isn't that true?

A By choice.

Q Is it your sworn testimony you've been offered promotions at State Farm you've turned down?

A No, that's not true.

Q You are aware, are you not, of a very large sex discrimination case pursued against State Farm by --

MR. SCHULTZ: Your Honor, I object to this. May we approach the bench?

THE COURT: You may.

(Side bar conference held out of the hearing of the jury.)

THE COURT: I sustain the objection.

MR. CHRISTENSEN: That's all I have.

[206] **REDIRECT EXAMINATION BY MR. SCHULTZ:**

Q Ms. Stout, let me show you this document, here, again, for a minute, that came from Fred Hartwell. Do you see this, here?

A "Strive?"

Q Yeah.

A Uh-huh.

Q Now below that does it say how you're going to accomplish these goals. Does it say, "By way of sound estimatics and the use of all cost-saving measures"?

A Yes, sir.

Q Are sound estimatics a deceptive practice?

A No, sound estimatics are using, or utilizing all the tools that you have available in order to repair a vehicle for as reasonable amount of money as you possibly can.

Q And is it wrong to use cost-saving measures, as you understand it?

A I don't believe that it is. I think it's important that a person is aware that these areas are available, and to utilize it as much as they possibly can.

Q Are you aware of what happened to the cost of [207] original equipment manufactured parts when after-market parts started being used?

MR. CHRISTENSEN: Objection, it goes beyond the scope of cross, and it's leading.

MR. SCHULTZ: Well, he went right into all these cost savings stuff, Your Honor.

THE COURT: I'll sustain the objection, both on the basis it's leading, and I think it goes beyond the scope of his examination.

Q (BY MR. SCHULTZ) If you're trying to strive to reduce costs by improved negotiations, is that a deceptive and dishonest approach to things, in your view?

A Repeat that question.

Q To improve negotiations, is that a legitimate way to approach costs?

A I think any time you spend the time to work things out with an individual and try to arrive at a reasonable amount of money, I think that's an improvement.

Q And it says down here at the bottom, "Control towing and storage expense by timely contact and prompt settlement offers." Has it been your experience that customers get upset with timely contacts and prompt settlement offers?

[208] A I find the reverse to be true. I find that people prefer fast service and contact.

Q Now, you were shown a document of Bruce Davis' that said he had a goal of $100 a month in appearance allowances.

A Yes, sir.

Q Does that amount of money in appearance allowances as a goal per month suggest to you that there was a tremendous emphasis on that?

A That appears to me to be a very, very small percentage, when you consider, say, the cost of a given part can be, say, $500.

Q You were asked about these co-pay drafts, and you know you indicated that was a little bit out of your area, but you were asked a question about that. And let me just -- If you don't know this, just tell me. But by using co-pay drafts, does that have any

effect on the amount of paper work or administrative work that has to go in to finalizing a repair settlement?

A I think you're asking me something I'm not really attuned to.

Q Okay, I'll ask somebody else that. Are you able to get along with the body shops that you deal with as an estimator?

A I think I have a good reputation.

[209] Q Even though you use salvage or after-market parts sometimes?

A Yes, sir, so do they.

Q One of the things Bruce Davis testified to, that I think you would agree with, Ms. Stout, is he said he thought it was appropriate to use salvage parts in some repairs. In fact, in some instances it was better to use salvage parts. Do you agree with that?

A Yes, I do.

Q Bruce Davis also testified that the problem he had with appearance allowances, Ms. Stout, was that the options weren't disclosed, or weren't explained. It wasn't the concept of appearance allowances in and of itself.

Now, is it your testimony here that you did explain these options, so the customers did know?

A Yes, sir.

Q Were you ever taught, as an employee of State Farm, in dealing with policy holders and other customers, to take the attitude that you were preying upon the weakest of the herd? Trying to take advantage of the weakest people?

MR. CHRISTENSEN: I'm going to object to this as beyond the scope of cross.

MR. SCHULTZ: I think, Your Honor, they went [210] into what they claim are improper practices with the claimants.

THE COURT: I'll allow this question to be answered, but you're right at the edge, I think.

Q (BY MR. SCHULTZ) Were you ever taught to take advantage of the weakest types of people in dealing with them in their claims?

A No, sir, I find that repugnant.

MR. SCHULTZ: That's all.

THE COURT: Ms. Stout, you may step down.

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